TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1905.

No. 359.

THE UNITED STATES, APPELLANT,

vs.

WILLIAM A. CLARK.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

VOL. V OF TESTIMONY (PAGES 2113 TO 2640, INCLUSIVE).

FILED JULY 26, 1906.

(19861.)

No. 1070

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE NINTH CIRCUIT.

TRANSCRIPT OF RECORD.

THE UNITED STATES OF AMERICA,
Appellant,

vs.

WILLIAM A. CLARK,
Appellee.

TESTIMONY.

VOL. V

Pages 2113 to 2640, Inclusive.

Upon Appeal from the United States Circuit Court for the District of Montana.

The Filmer Brothers Co. Print, 424 Sansome St., S. F.

(Testimony of Levi B. Cyr.)

Q. Who did you receive it from?

A. Yes, I received it from Mr. Cobban, I think.

Q. Mr. Cobban? A. Yes, sir,

Q. Mr. Cobban gave you this, or did you take it up home to your wife, and have her sign it, and acknowledge it before this notary?

A. Yes, sir.

Q. Had you received your money from Mr. Cobban before you sent the deed back?

A. No, sir, not that I know of.

Q. You received it afterwards? A. Yes, sir.

Q. How did you receive it?

A. I think I got a check for it. I ain't sure.

Q. A check from Missoula?

A. No, I was there in Missoula.

Q. You called in the office afterwards?

A. Yes, sir.

Q. Did you take the deed back yourself?

A. Yes, I did. I came back to Missoula with it.

Q. After you had and your wife had signed it, you took it back to Cobban? A. Yes, sir.

Q. How much money did he give you?

A. I don't remember. I didn't keep track of it, whether he gave me so much a thousand or so much for the land, the eighty acres—I don't remember just how it was.

Q. You delivered over to him this deed executed by yourself and wife and acknowledged. Now, do you

(Testimony of Levi B. Cyr.)

swear that you don't remember how much money he gave you?

A. No, I don't remember what the check called for.

Q. You do not? A. No, sir.

Q. Do you remember what bank the check was on?

A. I do; it was on the Western National Bank.

Q. The Western National Bank of Missoula?

A. Of Missoula, yes, sir.

Q. Was Vital along at the same time?

A. I don't remember whether Vital got his money for what he sold at the same time or not. I couldn't tell you.

Q. Whether he sold at the same time or not?

A. I don't know. I think the sale was made that day in the office.

Q. When you delivered the deed over.

A. Yes, sir.

Q. Well, was it more than a hundred dollars that you received?

A. Yes, it was more than a hundred dollars that I received, but I don't know exactly how much over.

Q. Well, was it $120?

A. I don't think I remember right. But if I do remember right it was a little over $140.

Q. You think it was a little over $140.

A. Yes, I think so.

Q. And if it was a little over $140.00 it would be less than $150.00?

A. Yes, I think the check called for less than $150.00,

(Testimony of Levi B. Cyr.)

but I am positive it was over $140.00. I don't know just how much over.

Q. Why are you now positive that it was over $140.00, when a few moments ago you couldn't recollect anything about it?

A. Well, I knew I got a check and I got to thinking about it and I knew it was $140.00, and something over. After he got his money out of it that he loaned me for proving up on the land.

Q. And that is what you got, $140.00?

A. Yes, I may have got over that, too. I know I got a check for $140.00 and something over on that day. That is just what I made out of the eighty acres.

Q. And do you know what money was paid out for expenses, what the expenses were?

A. From Missoula here?

Q. No, the other payments?

A. No, I know I paid ten dollars in the land office.

Q. You didn't borrow that money?

A. No, sir, I paid my own expenses.

Q. Very well, you paid your own expenses, and you paid ten dollars for filing? A. Yes, sir.

Q. And you came to Helena twice?

A. Yes, sir.

Q. Did you pay your expenses both times?

A. Yes, sir.

Q. How much were your expenses each time?

A. Well, I guess my expenses must have been twelve or fifteen dollars, maybe twenty dollars.

(Testimony of Levi B. Cyr.)

Q. Each time? A. Yes, sir, each time.

Q. Now, then, I read from the records that Vital Cyr filed on his claim, which is the northwest quarter, being lots 1 and 2, and the east half of the northwest quarter of section 18, township 16, north, range 14 west, in the district of lands subject to sale at Helena, Montana on the 25th day of September, 1899.

Q. You said that was the time he was with you?

A. Yes, sir.

Q. And that on this description the final proofs were taken on the 18th day of December, 1899, and on the 22d day of December, before Wallace P. Smith, a notary public, Mr. Vital Cyr, an unmarried man, conveyed to R. M. Cobban, the land described in his deed, from which I read, being the northwest quarter of section 18, township 16, north, range 14 west, Montana Meridian.

A. Yes, sir.

Q. At the time that he delivered his deed over to Mr. Cobban you were present, as I understand it?

A. Why, I was in the office there with him at the same time, yes.

Q. Did you see him receive a check, too?

A. Well, I am not positive about that.

Q. You are not positive as to that?

A. No, I ain't sure; I don't really remember whether he did or not.

Q. Well, he sold the land to Cobban in your presence, and he went out with you—you went out of the office together, did you?

(Testimony of Levi B. Cyr.)

A. He didn't go over to the bank to cash his check with me. I don't remember anyway. He might have got a check from Mr. Cobban, or might have got currency.

Q. You don't remember about that?

A. No, sir.

Q. Did you see him that day? A. Yes, sir.

Q. You were with him the rest of the day?

A. No, sir, he stopped there in town, and would sometimes meet me on the street.

Q. At that time under the circumstances you have just named, do you recollect how much he received?

A. He told me himself.

Q. How much did he receive?

By Mr. WALSH.—We object to that for the reason that it is irrelevant and immaterial and hearsay.

A. I think he told me; I am pretty sure he told me he got over a hundred dollars clear of expenses.

Q. You were one of his witnesses, I see, at the time of final proof? A. Yes, sir.

Q. He was one of yours? A. Yes, sir.

Cross-examination.

(By Mr. WALSH.)

Q. Mr. Cyr, I wish you would tell what logging outfit that you have spoken of consisted of, and for what purpose it was?

A. Well, the winter previous I was running a camp

(Testimony of Levi B. Cyr.)

of my own and I had a pretty good outfit, and I sold part of it, but kept the best part of it.

Q. Well, what do you mean by running a camp? What kind of work were you doing?

A. Well, I was logging for a man by the name of Edward C. Johnson.

Q. That is, cutting down the trees and hauling the logs down to the stream?

A. Yes, sir, cutting down the trees, and hauling logs down the stream.

Q. And how many two-horse teams did you have?

A. Two two-horse teams.

Q. And at the time you made this filing you had two good teams?

A. Yes, sir, I had two good teams. I had five horses, but I had two good work teams.

Q. And an other horse? A. And another horse.

Q. And an outfit complete? A. Yes, sir.

Q. Consisting of what?

A. Horses, harness, wagons, etc., everything connected with that business.

Q. How many men did you employ?

A. Well, I could have worked twenty men.

Q. How many men had you employed during the season preceding? A. Eighteen or twenty-five.

Q. About how much money does an outfit of that kind represent, Mr. Cyr?

A. Oh, I couldn't tell. That is the logging outfit, just itself, the outfit besides the horses cost me some-

(Testimony of Levi B. Cyr.)

thing like five or six hundred dollars. That is what it cost me.

Q. And the teams, with an outfit as they were, would be worth how much?

A. Two hundred and fifty dollars, a span; they would be worth that much.

Q. Now, you are running the butcher business at this time?

A. No, sir, at the time I filed I wasn't running the butcher business.

Q. What is that?

A. At the time I filed on this claim I wasn't running the butcher business.

Q. You were not?

A. No, when the camp broke up at Quigley I went to logging.

Q. After the camp broke up you quit the butcher business and went to logging? A. Yes, sir.

Q. Your wife was still left there, though, as I understand you? A. My family was still living there.

Q. You are pretty sure, Mr. Cyr, that Mr. Griswold didn't hire you to take up this land for Mr. Cobban?

A. I never seen Mr. Griswold, and I therefore never had any talk with Mr. Griswold. Never had any talk with Mr. Griswold that I remember of until the time that he went and estimated the timber on my claim.

Q. When was that, with reference to the time you made proof?

A. I think it was right after I proved up. Then I

(Testimony of Levi B. Cyr.)

didn't have any conversation with him to amount to anything.

Q. And did you know Mr. Griswold prior to that time? A. I knew him fairly well, yes.

Q. Where did you know him?

A. I knew him in the Blackfoot. The first time I ever seen Mr. Griswold was in the Blackfoot.

Q. Did you know what reputation he bore up in that country? A. Oh, no.

Q. You couldn't say about that? A. No.

Q. Well, now, you are pretty sure that Mr. Jemison didn't hire you to prove up on this claim for Mr. Cobban? A. Yes, sir, I am very sure about that.

Q. Nor Mr. Kilburn? A. No, sir.

Q. Nor Mr. Cobban, himself? A. No, sir.

Q. Nor Mr. Catlin? A. No, sir.

Q. In fact, nobody else employed you to take it up for anybody?

A. No, sir, the time I went to look for that claim I didn't know what I would take up. I didn't know whether I would take a claim up or not. I just wanted to see what I could get for myself. I didn't think Mr. Cobban knew I was up there.

Q. You took it up, you say, with a view to acquire title to it, and cut off the logs yourself and put them in the stream? A. Yes, sir.

Q. In the logging and timber business that you were then carrying on? A. Yes, sir.

Q. Well, now, after you came back from making your

(Testimony of Levi B. Cyr.)

final proof, or rather from selecting the land up at Missoula, you say you went to Cobban and Densmore's office to look over their map?

A. Yes, I knew their map was all right, and I could find what I wanted there, and I was acquainted with Mr. Dinsmore.

Q. You knew Mr. Dinsmore?

A. Yes, I knew him fairly well then.

Q. You knew what business he was engaged in?

A. Yes, sir.

Q. What that business was that he was engaged in at that time?

A. Well, I think he was hunting for timber and one thing and another.

Q. Well, why did you go to his office. What information did you want to get from him?

A. Well, I went there because I thought it was the proper place to go. I knew that he had a good map there of Deer Lodge County, and I wanted to see it.

Q. And what did you want to see the map of Deer Lodge County for?

A. Well, it was to check up a portion of the timber.

Q. You made some calculation, I presume, did you, with this timber in the woods? A. Yes, sir.

Q. Are you familiar with the markings of the corners of the Government survey upon the trees to indicate the corners? A. No, sir.

Q. Not very familiar with them? A. No, sir.

(Testimony of Levi B. Cyr.)

Q. You have seen the places and the markings on the trees indicating the corners? A. Yes, sir.

Q. Now, were you able to get any information from Mr. Densmore in Messrs. Cobban and Densmore's office as to whether this land here was subject to entry or not?

A. No, except, I think, I didn't know whether it was Mr. Cobban or Mr. Densmore told me that before I make any expense of coming over here I had better telegraph here to Mr. Greene and find out whether that section was loose.

Q. And did you do so? A. I did so.

Q. Who did the telegraphing?

A. I did myself.

Q. And did you receive an answer? A. I did.

Q. And that was to the effect that the section was vacant?

A. That it was to be taken up, yes, sir.

Q. And accordingly you came down here and made your filing? A. Yes, sir.

Q. You had known Mr. Catlin, I understood you to say, before.

A. Yes, I had known him because he knew my folks pretty well, and I had met him several times in town.

Q. You went to him and he made out your final papers?

A. Yes, and I telegraphed here that I was coming here to file on a certain piece of land. I don't remember whether it was him or Mr. Densmore that told me that

(Testimony of Levi B. Cyr.)

Mr. Catlin could draw up the papers and save me having them drawn up here.

Q. And what was the talk with you—that you had with him concerning his compensation for drawing the papers for you?

A. Nothing whatever. I just asked him, and he said he would draw them, and he did so, and when he got through I asked him what was his charge, and he said, nothing, Mr. Cyr.

Q. Well, now, it appears, Mr. Cyr, that after you had made this filing, and when you came to prove up that you borrowed the money to make the proof to Mr. Cobban?

A. Yes, sir, I asked Mr. Cobban to make me a loan.

Q. When was this with reference to the time you made your filing?

A. Oh, it was a few days before the time I was up to prove up, because if I didn't have any money, why Mr. Cobban—if I couldn't get the money from Mr. Cobban I knew where I could have got it. My folks would have loaned it to me.

Q. At the time you made your filing on the land where did you contemplate getting the money with which to pay for it?

A. Well, at the time, I made the filing I knew I could raise the money to enter it and if I didn't get it from Mr. Cobban I knew that I could have got it from my folks.

Q. Where could you have got it?

(Testimony of Levi B. Cyr.)

A. I could have got it of Mr. Seeley, and several places in town. I could have got it. I bought another span of horses there about that time, and I could have mortgaged them and got the money.

Q. You say you could have got it from your folks if you wanted to? A. Yes, sir.

Q. They lived at Grass Valley?

A. Yes, sir. Some lived in Grass Valley and some in Flathead.

Q. You are familiar—your family is quite a large and extensive family? A. Yes, sir.

Q. Your father has lived there a great many years?

A. He don't live there at present, but he has lived there about twelve years, I should judge.

Q. Your mother still lives on the ranch at Grass Valley? A. Yes, sir.

Q. How much of a ranch is that?

A. One hundred and sixty acres.

Q. What kind of land is it?

A. It is almost all good timothy hay land.

Q. Now, you said something about borrowing from Mr. Cobban on some security?

A. I said at the time, if you will make me a loan I should like to have one. If you don't care to do it, I can secure you on my teams. He told me it was all right, that I needn't secure him.

Q. No, how did it come that you knew Mr. Cobban? If Mr. Cobban was here in Helena on the day you made your final proof?

(Testimony of Levi B. Cyr.)

A. He knew the day that I was to prove up. He didn't give me the money personally, but he came here to pay the money to the land office, I should judge.

Q. Well, did you have a talk with him after he came here, or was that a matter of his own?

A. Yes, it was understood that he was to be here to see that I would prove up, and he would pay the money.

Q. And you are pretty sure that you didn't make any agreement to sell the land to him?

A. I never made any agreement and never was compelled to sell that land to him.

Q. You never made any promise to him?

A. No, sir.

Q. Well, now when you did afterwards convey to Mr. Cobban, how long were the negotiations pending, which finally resulted in a sale to Mr. Cobban, or was it all closed up at once?

A. No, it was a few days; as I understood some time ago, and as I stated, after I rented out my teams and made up my mind to sell the land I told Vital Cyr that I would sell, and if he wanted to sell, I told him, why, Mr. Cobban would buy his also, and I think he asked me what kind of land it was. I think he sent an estimator to see what kind of land it was.

Q. What leads you to that belief, Mr. Cyr?

A. To which belief?

Q. That he sent a man out to estimate the timber?

(Testimony of Levi B. Cyr.)

A. Why, I think Mr. Griswold was there estimating the timber.

Q. You spoke about having met Mr. Griswold in Missoula? A. Yes, sir.

Q. And that was before you made your proof?

A. I don't remember, but I think Mr. Griswold told me that he had been out on the land.

Q. That Mr. Griswold himself, had?

A. Yes, sir.

Q. Now, your deed there seems to bear date the 22d of December? A. Yes, sir.

Q. And is acknowledged on the same day, but it doesn't appear to have been filed in the County Recorder's office until—later. A. The 29th, yes, sir.

Q. Now, do you remember anything about how that came about?

A. Well, I expect that is the time it took me to go from Missoula up to Quigley to get my wife to sign the deed.

Q. Well, this appears to be acknowledged before a notary on the 22d day of December by yourself and your wife? A. Oh, on the 22d?

Q. Yes, but it don't appear to be recorded for a week after that? A. Well, that I can explain.

Q. Well, you don't remember how it occurred?

A. No, sir.

Q. Well, was there any delay occasioned in the paying of the money by reason of the fact that it was neces-

(Testimony of Levi B. Cyr.)

sary to get the signature of yourself and your wife together?

A. Well, I remember receiving my money for the land; quite a while ago, if I remember—a few days after I proved up.

Q. Now, it appears that at the time that you filed on the land, Mr. Cyr, that you made an affidavit to this effect: "I do not apply to purchase the land above described on speculation, but in good faith to appropriate it to my own exclusive use and benefit, and that I have not directly or indirectly made any agreement or contract, or in any way or manner, with any person or persons, whomsoever, by which the title I might acquire from the Government of the United States may inure in whole or in part to the benefit of any person except myself." Was that true, Mr. Cyr? A. Yes, sir.

Q. And then when you came to make your final proof you were asked this question: "Have you sold or transferred your claim to this land since making your sworn statement, or have you directly or indirectly, made any agreement or contract, in any way or manner, with any person whomsoever, by which the title which you may acquire from the Government of the United States may inure in whole or in part, to the benefit of any person except yourself?" Was that correct?

A. Yes, sir.

Q. That was true, was it not? A. Yes, sir.

Q. Then you were asked the following question: "Do you make this entry in good faith for the appropria-

(Testimony of Levi B. Cyr.)

tion of the land exclusively to your own use and not for the use or benefit of any other person?" to which you answered, "Yes, sir." Was that true?

A. That is true.

Q. Then you were asked the following question: "Has any other person that yourself, or has any firm, corporation or association any interest in the entry you are now making, or in the land, or in the timber thereon?" To which you replied, "No, sir." Was that true?

A. Yes, sir.

Q. Now, you wrote you say during this time, to Mr. Vogel about seeing if you couldn't get a contract to log during the winter. Who was this Mr. Vogel?

A. I think Mr. Vogel was—he was in the employ of the Blackfoot Milling Company.

Q. And their headquarters were where?

A. At Bonner, I think. That is where I directed my letter.

Q. Had you known him prior to that time?

A. No, I didn't know the gentleman. I have only just talked with him. I just wrote to him to see if there was any chance to put in a few logs.

Q. And he said he wouldn't be able to give you any definite answer just then?

A. No. I also told him that I had a claim there at Clearwater and if I couldn't make a contract to log the timber myself that if he wanted to buy it I would sell the claim to him after it was proved up and he told me that he would see after it had been proved up on.

(Testimony of Levi B. Cyr.)

Q. Well, what—you said something about the purchase—about having discharged their old logging crews. What was that, Mr. Cyr?

A. Well, the old logging crews, Mr. George Hammond and I think Mr. Kilburn used to be one of them and a few others, and I was talking to Mr. Hammond and he told me if I wanted to work that he didn't think there was much chance that winter. In fact they had laid off the men and had discontinued the camps and he thought I had better sell it, that I couldn't do any better.

Redirect Examination.

(By Mr. MAYNARD.)

Q. You had never seen Mr. Vogel, you say?

A. No I had never seen him. Didn't know him personally that I knew of.

Q. You had never seen him? A. No, sir.

Q. Who told you about it?

A. Oh, I knew of him, I knew that he was the gentleman that was manager for the Blackfoot Milling Company. Had known his name, had seen it in the papers in fact.

Q. What is his first name?

A. I think his first name is Frank but I am not sure.

Q. How did you direct the letter?

A. I don't remember which initial I put on the letter, but I just put on Frank Vogel, as I remember.

Q. But you don't remember how you address it?

(Testimony of Levi B. Cyr.)

A. No, but I know that he got the letter.

Q. How do you know that?

A. Because I got an answer.

Q. Have you got that letter? A. No.

Q. You have not?

A. No, sir, nor my answer from him, but I never kept that letter that I got from him.

Q. Never kept the letter? A. No, sir.

Q. And he was—and you addressed it to Bonner, Montana? A. Yes, sir.

Q. And you got the answer back from Mr. Vogel at Bonner? A. Yes, sir.

Q. The letter was written there, was it?

A. The letter was written there and I received it in Missoula.

Q. You received it in Missoula? A. Yes, sir.

Q. And that was when?

A. That was that same fall that I proved up on the claim.

Q. And he wrote you what?

A. He wrote me that he couldn't tell me anything about logging, or about the claim; that he would see after I proved up. That he might take the timber; and how much I had on it and what kind of land I had, but he couldn't give me no definite answer when I was over there.

Q. You found that letter?

A. Yes, sir, I got the letter from him.

Q. But you haven't that letter now?

(Testimony of Levi B. Cyr.)

A. No, sir.

Q. You tore it up? A. Yes, sir.

Q. And you had never seen him? A. No, sir.

Q. Or had any correspondence with him since?

A. No, sir.

Recross-examination.

(By Mr. WALSH.)

Q. Mr. Cyr, I show you this sworn statement that you made at the time that you made your filing. You will remember that? A. Yes, sir.

Q. You have been indicted for perjury in this matter in making that affidavit, have you not? You have been indicted in the United States Court?

A. I didn't know it.

Q. Well, you were informed of it, weren't you, yesterday? You learned of it yesterday?

A. I learned yesterday about it, yes.

Q. You have never been arrested, have you?

A. No, sir.

Redirect Examination.

(By Mr. MAYNARD.)

Q. Who informed you of this fact that you had been indicted?

A. I think that gentleman, Mr. Walsh.

Q. That just asked you the question?

A. Yes, sir.

Q. Whereabouts were you?

A. I think I was on the street at that time.

Q. When he told you?

(Testimony of Levi B. Cyr.)

A. Yes, sir, right there by his place there somewhere.

Q. Were there any others with you at the time?

A. No, sir.

Q. How did he happen to stop you on the street and tell you that?

A. Well, because I had seen him a little while before that.

Q. You had seen him a little while before that?

A. Yes, sir, he told me he thought I was, and I told him I didn't think I was, and he told me he would look it up and let me know.

Q. Where was he? A. At his office.

Q. Who took you there? A. Mr. Cobban.

Recross-examination.

(By Mr. WALSH.)

Q. Mr. Cyr, you were up in my office?

A. Yes; well, we didn't talk much about the matter. Mr. Cobban took me there to introduce me to you.

Q. I inquired of you about the facts connected with your entry, did I not?

A. Well, I think you might have spoken a few words about it. You told me that I was indicted for perjury, but I didn't think I was.

Q. Well, that was the nature of the talk you did have with me. I was asking you about what the facts were connected with your entry. A. Yes, sir.

Q. Whatever was said was said about that, was it not? A. Yes, sir.

That is all. **LEVI B. CYR.**

(Testimony of Oscar Muchenhirn.)

Subscribed and sworn to before me this thirteenth day of March, 1902.

HENRY N. BLAKE,
Examiner in Chancery.

Thursday, March 13, 1902, 10 A. M.

OSCAR MUCHENHIRN, a witness on behalf of the complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. MAYNARD.)

Q. Where were you born? A. In Sweden.

Q. When? A. 1868.

Q. When did you come to this country?

A. In 1885, 17 years ago it will be in April.

Q. When did you come to Montana?

A. Twelve years ago in 1890, in the fall, it will be 12 years this fall.

Q. Where did you settle?

A. Stopping up there at Clearwater for the last 5 or 6 years; that is where I took up them claims.

Q. What have you been doing there?

A. Been working in the woods all the time.

Q. Are you married? A. No.

Q. Who have you been working for?

A. I have been working for everybody up there; worked for the Blackfoot Milling Company most of the time up there, and I have been working down below on the Coeur d'Alene branch work there last winter—and then I got a homestead up there I stay on.

(Testimony of Oscar Muchenhirn.)

Q. When did you homestead your land?

A. I homesteaded it three years ago.

Q. Have you got anything else besides that?

A. No.

Q. Do you know Mr. Griswold?

A. Yes, I know him well.

Q. How long have you known him?

A. I don't remember; knew him ever since him came up there. I do not remember the year for sure; I think it was '95 or '96. He came up there, he started a saloon up there; I was working there when he bought the place; I was working up there then.

Q. Did he have a hotel up there, too?

A. A hotel, a saloon and postoffice.

Q. Did you board at his house at any time?

A. Yes; once in a while, when I was stopping there; a man had to stop there when he went to Missoula, back and forth; there was no other place to stop.

Mr. MAYNARD.—I show the witness the original sworn statement that he made under the Timber and Stone Act, so called.

A. Yes, that is my name, Oscar Muchenhirn.

Q. Did you write that?

A. That is my handwriting.

Q. Do you remember of your taking up a claim?

A. Yes, I remember it well.

Q. Who spoke to you first about it?

A. Steve Tepper, he is dead now; got killed in the Paloma mine a year ago.

(Testimony of Oscar Muchenhirn.)

Q. What was he doing at that time?

A. He was working up there for Griswold at that time, tending bar.

Q. Did you have any talk with any one besides Steve Tepper? A. No.

Q. What did he say to you?

Mr. BICKFORD.—We object to that as hearsay.

A. If I came up and took a claim he would loan me the money.

Q. Who would loan you? A. Steve Pepper.

Q. This man working for Griswold said he would loan you the money? A. Yes.

Q. How long had you known him?

A. I had known him for five or six years before that. I have known him all the time I have been up the Blackfoot River; since the first fall I was up there; we used to camp together in the winter.

Q. He was tending bar for Griswold?

A. Yes; he was tending bar for Griswold.

Q. Did you see Mr. Griswold at this time?

A. No, not at that time. I seen him the day I went down to Missoula; I did not speak to him about it only Steve Tepper told me; he came and asked me if I was going down to file on the claim, and I told him yes.

Q. Griswold said that?

A. Yes, then he asked me if I had any witnesses besides Steve Tepper and John Gilles, and then he told me I would have to have four witnesses; then he wrote his

(Testimony of Oscar Muchenhirn.)

name and Mr. Cobban's on. Johnnie told me I would have to have four witnesses.

Q. Was Steve Tepper, this bar-tender, the only perso you spoke to? A. Yes, that is the only one.

Q. Who went out with you to look at the location?

A. I was all alone; I had known about the timber two years before that, I had camped right there; Steve Tepper was in Missoula, and he got a map from the land office down there about timber that was not taken up yet; he showed me the map, and showed me where to find out; I had known the ground before that; I had been hunting there for two or three years.

Q. How far was it from where you were living at the time? A. It was only three miles.

Q. What kind of a place was it?

A. It was a steep side-hill, with big timber on—an open hill; all big timber on it.

Q. How many times did you go out there?

A. I don't remember how many times I was out there; I was out there nearly every day, sometimes.

Q. I mean after you made up your mind that you were going to take up this location?

A. I was out there—I was hunting around four or five days before I settled on that claim, then I went down and filed on it, then I was around there four or five times before I proved up; I was hunting for a homestead at the same time; I was hunting for a farm with water at the same time; the homestead is also right alongside of it; and I took up that timber and stone claim; the stone

(Testimony of Oscar Muchenhirn.)

and timber claim is up on the side-hill, and the homestead on the foot of the hill across the creek from me; I have been living there right along for three years now.

Q. Did you ever go out there with anybody except yourself? A. No.

Q. Always went alone?

A. Yes, always went alone.

Q. How much did Tepper tell you he would loan you?

A. He told me it would cost me $425, and that he could loan me that much.

Mr. BICKFORD.—We move to strike this out, because it is hearsay.

Q. Now, Mr. Griswold, you say, told you that you would have to have four witnesses? A. Yes.

Q. Wrote his name and Mr. Cobban's name?

A. Yes; I had Steve Tepper and Johnnie Gilles down before.

Q. Who did you go with when you went down to Missoula?

A. I went straight down to the land office, to that gentleman sitting at the end of the table; I went into him and told him I wanted to file on a claim; I showed him that map where abouts the claim was, showed him on the may where the claim was; he told me I would have to get papers made out, and he gave me the address of Mr. Catlin in Missoula, and he made them out for me.

Q. Mr. Hershey, this man here, gave you the address of Mr. Catlin?

A. Yes, Mr. Hershey gave me the address of Mr.

(Testimony of Oscar Muchenhirn.)

Catlin; I did not know whether there would be any papers made out.

Q. Had you ever seen this Mr. Hershey before?

A. Not any more than just when I filed on the claim that time, the day I proved up.

Q. Then when he gave you that note to Mr. Catlin; did you go there?

A. Yes; I went there and asked for Mr. Catlin; he was in Cobban's office at that time; I asked for Mr. Catlin, and I just told him that I wanted papers made out to file of a timber and stone claim; then I showed on the map the four pieces I wanted; then he made out the papers for me.

Q. That is the paper you saw Mr. Catlin fill out?

A. Yes, this all Mr. Catlin's writing; I just signed this. (Indicating.)

Q. Did you give Major Catlin the paper Griswold gave you?

A. No; Griswold did not give me any paper.

Q. You said he gave you two signatures; two witnesses besides your two witnesses?

A. I had a slip of paper where I wrote down Steve Tepper and John Gilles, the witnesses; Griswold told me he wanted to see it, and then he wrote down Griswold and Mr. Cobban; that is all he wrote down.

Q. What else was on this paper?

A. There was nothing else on it at all; I had that made up in my mind before what I wanted, that claim, section 2, range 15, I do not remember and I could not

(Testimony of Oscar Muchenhirn.)

name—it was taken up in quarters, and I could not name them; I pointed it out at the land office what I wanted; they just told me to go and have the papers made out; then I pointed out to Mr. Catlin in his office, and he made it out for me; it was the quarters, the best pieces out of the four, I picked those with the best timber on.

Q. As I understand you, you did not take a description of your location with you when you went to the land office?

A. No, only the witnesses' names contained on the slip of paper; then I went down to have them fix it up for me in the land office; I pointed out to Mr. Hershey on the map what I wanted and he took down a big map and showed me; he asked me if I did not have the papers made out and I told him no.

Q. Who wrote the names of Steven Tepper and Gilles down on this paper? A. That was Steve Tepper.

Q. Steve Tepper wrote it down? A. Yes.

Q. He wrote his own name down?

A. He wrote his own name and John Gilles' name down.

Q. How do you know he did?

A. Well, I seen him when he done it.

Q. Who was present?

A. There were only me and him in a saloon.

Q. How long after was it that Mr. Griswold wrote his name and Cobban's name?

A. He wrote it the next morning. I came down there in the evening to stop there over night.

(Testimony of Oscar Muchenhirn.)

Q. How big a paper was it that you got?

A. It was just a small piece of paper about that size; just big enough to write on.

Q. How many inches?

A. About a couple of inches.

Q. You do not call that a couple of inches?

A. Well, about that size.

Q. A slip of paper, was it about that size across here?

A. Yes. (Indicating about 4x7.)

Q. I read from the sworn statement which the witness has identified as being signed by him and having been filled out by Major Catlin.

"Land office at Missoula, Montana. Date, June 1st, 1899.

"I, Oscar Muckenhirn of Clearwater, county of Deer Lodge, State of Montana, desiring to avail myself of the provisions of the Act of Congress of June 3d, 1878, etc., ——— for the purchase of the southwest quarter of the northeast quarter, and the southwest quarter of the southwest quarter, and the southeast quarter of the southwest quarter, of section 2, township 15 north, of range 15 west, in the district of land subject to sale at Missoula, Montana."

Q. Where was Mr. Catlin when he filled out this?

A. He was in the office.

Q. In his office?

A. I found him in Mr. Catlin's office; Mr. Hershey gave me the address. I don't know whether it was Mr. Catlin's or Mr. Cobban's office; I went up in the office

(Testimony of Oscar Muchenhirn.)

there where he gave me the address and I found Mr. Catlin in there and he made it out.

Q. Now, you recognize this as the description, do you?

A. Yes, the southeast half of the southwest quarter—that is the corner right where my home is on. I cannot read any more, I only know the timber; that is the northeast quarter; I can show you on the map where the land is located.

Q. You cannot read it?

Mr. BICKFORD.—These description are in initials.

The WITNESS.—Section 2, southwest quarter and the northeast quarter of the southwest quarter (that is supposed to be an M, ain't it?)

Mr. BICKFORD.—We ask that the description be read.

The WITNESS.—The southwest quarter of the southeast quarter—

Mr. BICKFORD.—We ask now that the description be read.

By the EXAMINER.—Perhaps Mr. Maynard may have an object in view in showing that the witness is not acquainted with the English language.

Mr. BICKFORD.—The explanation I make is that these descriptions are all written in initials, which are plain only to those who are acquainted with that sort of thing; to a lawyer they would be easily readable; to an officer of the land office they would convey a meaning; but to one who is not used to the use of these initials to indicate a tract of land they would indicate nothing; we be-

(Testimony of Oscar Muchenhirn.)

lieve it would expedite matters to have the description read to the witness rather than have him read it himself.

By the EXAMINER.—The record showing that it is very difficult for the witness to read the description in the paper.

Q. Now, Mr. Muckenhirn, you say you went out all alone by yourself on this mountain side?

A. Yes, I was all over it by myself.

Q. And nobody went with you at all?

A. No.

Q. Then you went down to the land office at Missoula and filed? A. A. Yes.

Q. You had the names of the four witnesses?

A. Yes.

Q. Two of which Tepper had written the bartender for Griswold? A. Yes.

Q. And to which Mr. Griswold himself wrote?

A. Yes.

Q. Now, isn't it true, Mr. Muckenhirn, that also on this paper which you have pointed out as the size upon which the names of the four witnesses were written, that this description was also written.

Mr. BICKFORD.—We object to this as leading, and is not the best evidence.

A. I do not remember for sure that that was put down; maybe Griswold put it down. I showed him what I wanted to take up. I don't remember for sure if he put that down.

(Testimony of Oscar Muchenhirn.)

Q. But showed to Griswold the piece you wanted to take up? A. Yes, I showed it to him.

Q. He might have written it on there.

Mr. BICKFORD.—We object to that as leading.

A. I showed it to him.

Q. After you had filed, where did you go then, Oscar?

A. I went up to work on the ranches.

Q. Up in the Blackfoot country again?

A. Yes.

Q. How long did you stay up there before you went back to Missoula? A. You mean before I proved up.

Q. Yes.

A. I stayed there until the day before I proved up.

Q. Do you sell Mr. Catlin or Mr. Cobban between those two dates, between the time you filed and the time you proved up? A. I seen Mr. Cobban only.

Q. You saw him?

A. Yes, he was up the Blackfoot.

Q. When was it you saw Mr. Cobban?

A. It was some time in July, about two weeks before I proved up.

Q. Where was he? A. He was at Clearwater.

Q. At Mr. Griswold's? A. Yes.

Q. Did you have any conversation with him?

A. Yes, I asked him about borrowing money to prove up on the claim.

Q. Who was present when you asked him?

A. Steve Tepper was there.

Q. Anybody else? A. No.

(Testimony of Oscar Muchenhirn.)

Q. Just Steve Tepper, the bartender, and Mr. Cobban?

A. Yes.

Q. That was two weeks before you proved up?

A. Yes.

Q. What did you say to Mr. Cobban?

A. I asked him if I could borrow the money for to prove up, as I could not get it from Steve Tepper, as I was expecting when I filed on it, he bought the saloon from Mr. Griswold two or three weeks after I filed on the claim, that is the way he spent all of his money—took all of his money to pay for the saloon.

Q. Had you ever had any conversation with Mr. Cobban before? A. No.

Q. Had you ever seen him before? A. No.

Q. State how it was that you happened to apply to Mr. Cobban? A. Steve Tepper told me to ask him,

Q. What did Steve Tepper tell you?

A. Steve Tepper told me to go and ask Cobban if I could borrow the money to prove up on the claim on account of his having spent his money to buy the place from Griswold up here.

Q. Had you any talk with Mr. Griswold about getting any money? A. No.

Q. To prove up?

A. No, never spoke to Griswold about it.

Q. Tepper had told you how long before this that he could not let you have the money?

A. Before I filed on the claim, he told me he would loan me the money to prove up on.

(Testimony of Oscar Muchenhirn.)

Q. You don't understand me, Oscar. I meant how long was it after you filed that Tepper told you he could not let you have the money?

A. Oh, about three or four weeks; he bought Griswold's place up there, and I don't remember which day it was before then he bought that place; that took all his money, and he could not let me have any money then.

Q. But he did tell you that you could get the money from Cobban, did he?

A. He told me to go and see Cobban.

Q. How long was that before you did see him in fact?

A. Oh, I don't remember now, it was some time. I seen Cobban the first time he came up the Clearwater after that. Steve Tepper sent word to me where I was working that Cobban was up there, and I could go and see him.

Q. Are you able to state the time that passed between the time that Tepper told you that he could not let you have the money and your seeing Cobban?

A. No, I could not tell. I don't pay any attention to dates like that.

Q. Could you say whether it was a week after that time?

A. Oh, there must have been two weeks, anyhow.

Q. But you had not seen Cobban during the two weeks that preceded the time of your really seeing Cobban at the Clearwater, you did not go to Missoula to see him?

A. No.

Q. You stayed at home? A. I stayed at home.

(Testimony of Oscar Muchenhirn.)

Q. What did Cobban say when—

A. He told me he would let me have the money if I would give him a mortgage on the place, that is what he told me.

Q. Did you see him again after that? A. No.

Q. Did you see him with Mr. Griswold up there?

A. No.

Q. Didn't see him?

A. No, I wasn't around that at all. I was working all the time.

Q. He was stopping at Mr. Griswold's house?

A. Once in a while.

Q. He was there when you had the conversation with him? A. Yes.

Q. When did you see Cobban again?

A. I haven't seen him since until I met him here in Helena, yesterday.

Q. Didn't you see him when you filed? A. No.

Q. You didn't see him then? A. No.

Q. I mean when you proved up?

A. I didn't see him then either.

Q. Who did you go down to Missoula with, when you went to Missoula?

A. Me and Steve Tepper rode down together.

Q. Just you two?

A. Yes, Steve Tepper rode with me.

Q. When you got down to Missoula, when did you see Mr. Griswold?

(Testimony of Oscar Muchenhirn.)

A. I met Griswold at the theater in the evening down there; I was in there.

Q. Did you know that he was going to be there?

A. No.

Q. Who did you expect was going to be your other witness?

A. Mr. Cobban, I expected him to be in Missoula; either Mr. Cobban or Mr. Griswold.

Q. But you say you did not expect to see Mr. Griswold there?

A. No, but I expected to see Mr. Cobban.

Q. He was going to be your other witness?

A. Yes.

Q. How long after was it that you met Griswold at the theater before you went to the land office?

A. I met Griswold in the evening; I went to the land office the next morning.

Q. Do you know how he happened to become your witness?

A. Well, he wrote down himself, advertised himself as a witness.

Mr. MAYNARD.—From the original papers I have in my hand I find that Mr. C. L. Griswold was in fact one of the witnesses for this witness at that time; Steven Tepper was the other.

Q. You went to Mr. Cobban's office, didn't you?

A. Yes, in the morning.

Q. Before you proved up? A. Yes.

Q. You say you didn't see him there at all?

(Testimony of Oscar Muchenhirn.)

A. No, he was not home.

Q. You have never seen him until you saw him here yesterday? A. No.

Q. Did you get your money to pay for this land, there?

A. Yes, I borrowed it from the old man—Pound.

Q. You got it there in the morning? A. Yes.

Q. How much did he give you?

A. He gave me 410.

Q. Four hundred and ten dollars? A. Yes.

Q. Who was with you at the time?

A. There was Griswold, I think.

A. Griswold was with you at the time you got the money from Pound? A. Yes.

Q. Then you went to the land office and proved up?

A. Yes.

Q. Do you know who paid this money that was obtained from Pound, into the land office?

A. I paid that into the land office myself, $411.50.

Q. And Griswold went with you to the land office?

A. Not when I paid the money.

Q. Who was with you? A. Nobody.

Q. Well, you paid it at the time you proved up, didn't you? A. Yes.

Q. Mr. Griswold appeared and testified the same day? A. Yes.

Q. Then if they were there and testified on the same day which enabled you to make your proof, and you paid the money the same day; why wasn't Griswold there?

(Testimony of Oscar Muchenhirn.)

A. Griswold was there.

Q. At the time when you paid the money?

A. Not when I paid the money.

Q. How long after you proved up before you paid the money?

A. Only about ten or fifteen minutes.

Q. Where was Griswold?

A. I don't know; hewent out.

Q. He went out? A. Yes.

Q. Then after you proved up and got this money from Mr. Pound and paid that money into the land office, you went right back then and deeded to Mr. Cobban, didn't you?

Mr. BICKFORD.—We object to that as leading, and as being based upon the assumption of counsel and not upon the testimony of the witness heretofore given.

A. Well, when I came back I was going to give him a mortgage on the claim for the money I had borrowed; he wanted 12 per cent interest on the money and then I asked him how much he would give me for it; he told me he would give me seven hundred , then I sold it to him for that rather than take a mortgage on it.

Q. So under the circumstances you sold to—

A. Yes.

Q. On the same day? A. Yes.

Q. Who was present at the time you sold?

A. I think Griswold was a witness when I deeded over.

Q. Griswold was there at the time?

(Testimony of Oscar Muchenhirn.)

A. Yes, he was in Mr. Cobban's office.

Q. Who paid you the money?

A. Which money, for the claim?

Q. Who paid you the money after you gave the deed over and signed it, how much money did you get then?

A. I got seven hundred dollars for the claim, then he discounted the money he loaned me to prove up on, I was going to give him a mortgage on it.

Q. I asked you when you deeded on this day, you deeded and delivered a deed over in Cobban's office there, how much money did you receive for yourself?

A. Oh, I got two hundred and ninety. I borrowed four hundred, then when I deeded the claim over I got two hundred and ninety that was left, he paid me seven hundred dollars for the claim.

Q. There was two hundred and ninety that you got over and above what you paid into the land office?

Mr. BICKFORD.—We object to that because the question assumes a different state of facts from that testified to by the witness, which was that he himself, the witness, had paid the money into the land office. The question assumes that the money was paid into the land office by somebody besides the witness and we object to the assumption of counsel and the misstatement of the testimony of the witness. A. Yes.

Q. Now, you say that in the presence of Mr. Griswold, you deeded, and Mr. Pound, was it?

A. Yes, Pound.

(Testimony of Oscar Muchenhirn.)

Q. Gave you two hundred and ninety dollars?

A. Yes.

Q. Was that in cash or in a check?

A. In a check.

Q. Do you know what bank that was on?

A. It was on the First National Bank of Missoula.

Q. What did you do with the check?

A. I went down and got it cashed.

Q. It was payable to your order was it?

Mr. BICKFORD.—We object to that because the check itself would be the best evidence of the fact sought to be proved by the witness. A. Yes.

Q. For two hundred and ninety dollars?

A. Yes; no, there was some expenses for the deed, recording and for some revenue stamps on the deed, he took that out before he made out the check; there was revenue stamps and the recording the deed that were taken out.

Q. Well, I asked you how much the check was for?

A. I don't remember for sure now, but was somewhere around two hundred and ninety dollars; it was only $1.50 revenue stamps taken out put on this deed, and then I think it was fifty cents I had to pay for the recording; it was close to two hundred and ninety dollars the check was made out for.

Q. And that two hundred and ninety dollars was what you got yourself?

A. Yes; well, I had to pay my witnesses out of that.

(Testimony of Oscar Muchenhirn.)

I paid Steve Tepper $25.00 and I paid Griswold three fifty for witnesses.

Q. What did you pay Tepper $25.00 for?

A. I had to fetch him down from Clearwater and back.

Q. You paid the expenses, didn't you, to bring him down there and back? A. Yes.

Q. You paid for the team? A. Yes.

Q. So he was not out anything for that?

A. He had to come down a purpose a witness.

Q. And you paid him twenty-five dollars?

A. Yes, it was his own team he had.

Q. How long were you and Tepper from home, from where he was?

A. We went down one day and we got to Missoula in the evening, proved up the next day and went home the third day.

Q. Who paid Tepper's expenses at Missoula?

A. I just paid him twenty-five dollars. He told me he would not come down for less and I had to pay that to get a witness.

Q. Don't you think that was pretty high to pay $25.00 for a witness?

A. Yes, but I could get nobody else. John Gilles was in the hotel but he was in partnership with Tepper there and either one I would have to pay $25.00 for.

Q. Neither of them had been out to the land with you?

(Testimony of Oscar Muchenhirn.)

A. No, they had been onto the land; Griswold was up there afterwards and Steve Tepper went up there.

Q. Still he charged you $25.00? A. Yes.

Q. Oscar, how was it that you had to pay Steve Tepper $25.00 and only paid Griswold three fifty?

A. I met Griswold in Missoula, he was there, I only gave him three fifty, I could not get Steve Tepper down for less than twenty-five.

Cross-examination.

(By Mr. BICKFORD.)

Q. You say, Mr. Muckenhirn, that you were born in Sweden? A. Yes.

Q. You have declared your intention to become a citizen of the United States?

A. I am a citizen.

Q. A full citizen? A. Yes.

Q. How long ago did you become a citizen?

A. Two years ago.

Q. Before you made your final proof upon this land?

A. No, afterwards.

Q. You had at that time only declared your intention to become a citizen? A. Yes.

Q. At that time you had, under the laws of the United States, a right to make a timber and stone entry, haven't you? A. Yes.

Q. Did you present any paper to the land office showing that you had declared your intention to become a citizen? A. Yes.

(Testimony of Oscar Muchenhirn.)

Q. Where was it that you declared your intention to become a citizen?

A. In the State of Minnesota, fourteen years ago.

Q. Then you afterwards became a full citizen here in this State? A. Yes.

Q. Now, as I understand you from your testimony you had known of this land for a considerable length of time? A. Yes.

Q. Where did you get the water from to locate your homestead, have you got an irrigating ditch?

A. No, I have not got an irrigating ditch built yet, but I have plenty of water.

Q. Where did you get it from?

A. From the creek running in there.

Q. Can this water be taken upon the timber land?

A. There is timber on it all.

Q. This land you entered as timber land?

A. That is all timber, no water on it, timber and stone land.

Q. It is not valuable for farming purposes?

A. The timber and stone land, no good for farming.

Q. Has it any other value than just for the timber and stone that is on it? A. That is all.

Q. And you say that you could not cultivate this land you took under the Timber and Stone Act at all?

A. No, you could not make anything out of it.

Q. Well, now, you are pretty well acquainted with Steve Tepper? A. Yes.

(Testimony of Oscar Muchenhirn.)

Q. Had you thought of taking up a timber and stone claim before he spoke to you about it? A. Yes.

Q. Long before that?

A. Yes, I had been thinking only I did not have the money before he promised to borrow me the money.

Q. Well, then when you found that you could borrow the money from Steve Tepper, you concluded you would take up a timber and stone claim? A. Yes.

Q. That would make you three hundred and twenty acres of land right in the same vicinity? A. Yes.

Q. That was the first time you had made up your mind to take up a timber and stone claim?

A. I had been thinking of it before, but then I did not have the money before.

Q. You then came to the conclusion you would take up a claim? A. Yes.

Q. Well, now, when you went down to Missoula for the purpose of making this application for the land and filing on it you say you thought you went to the land office first? A. Yes.

Q. At the time you went to the land office and talked to Mr. Hershey did he give you a note, did he write a note to John B. Catlin or did he just write down on a slip of paper Mr. Catlin's or Mr. Cobban's?

A. Mr. Catlin's or Mr. Cobban's office, I can't tell for sure which.

Q. Just wrote the name of the office on it?

A. Yes.

(Testimony of Oscar Muchenhirn.)

Q. He did not give you any letter of introduction to him?

A. He only told me to go and get the papers made out.

Q. As I understand you, Catlin did make the papers out for you?

A. Mr. Catlin made out the papers for me.

Q. Then what did you do?

A. He brought the papers down to the land office for me and I had them filed.

Q. And the land that you then filed upon was the south half of the southwest quarter, the northeast quarter of the southwest quarter and the southwest quarter of the southeast quarter of section 2, township 15 north of range 15 west. That was the land, was it?

A. Yes.

Q. Now, at that time you said that you had made no oher application under the Timber and Stone Act?

A. Yes.

Q. You never have made any? A. No.

Q. You said that you did not apply to purchase the land above described on speculation but on good faith to appropriate it to your own exclusive use and benefit; that was true, wasn't it? A. Yes.

Q. "And that I have not, directly or indirectly, made any agreement, or contract, or in any way or manner, with any persons whomsoever, by which the title I may acquire from the government of the United States, may

(Testimony of Oscar Muchenhirn.)

inure in whole or in part to the benefit of any person except myself." That was true, was it? A. Yes.

Q. You had not made any contract or agreement?

A. No.

Q. Hadn't somebody hired you to go onto this land and take it up for them?

A. No, not that I know of.

Q. As I understand your testimony you went to work haying between the time when you made your first application and the time when you made your final proof?

A. Yes.

Q. For whom did you work? A. Sunset.

Q. For whom? A. For Ben Morris.

Q. Now, I ask you to state whether or no between the time when you made your first application at the land office and the time when you went down there to make your final proof you had any talk or conversation with anybody with reference to selling this land to them? A. Not about selling.

Q. Now, I believe you said that Tepper had purchased the saloon belonging to Griswold?

A. Yes, he bought it.

Q. And for that reason could not lend you the money with which he make your final proof? A. Yes.

Q. Now, it was not until after he had told you that he could not lend you the money that you tried to borrow the money from anybody else, was it?

A. Well, Steve Tepper told me he had bought the place and could not let me have the money; he told me

(Testimony of Oscar Muchenhirn.)

that he thought that I could borrow the money from Mr. Cobban.

Q. In the testimony here that was given by Griswold he says, Griswold says, that you told him that Cobban would pay you more money than Griswold offered you?

A. Yes.

Q. He also testified that Griswold told you that he could only give you fifty dollars over and above the expenses of filing on the land. Did you ever have any talk of that kind with Griswold?

A. Not what I can remember of.

Q. Did you ever have any conversation of that kind at all?

A. I remember that it was three days before I went down; he came and asked me how much money I wanted. I told him I would take all the money I could get; I did not know it was about the land at all.

Q. He did not say anything about the land?

A. No.

Q. Did you ever tell him Cobban would give you one hundred dollars for it?

A. Never spoke to him about Cobban and the land at all.

Q. Did you ever have any talk with him of any kind with reference to selling this land? A. No.

Q. He says here in his testimony that he talked with you a good many times for a good while about this land; is that true?

A. I never spoke to Griswold about the land.

(Testimony of Oscar Muchenhirn.)

Q. Were you at that time stopping at his place in Clearwater?

A. I stopped there whenever I had to go through; it is a stopping place when a man is going to Missoula back and forth, he has to stop there.

Q. But you were not staying there permanently or boarding with him?

A. I only stopped there over night when I stopped.

Q. Now, with reference to any conversation that you had with anybody prior to your making final proof with reference to selling this land, did you have any conversation with anybody about selling the land before you made your final proof? A. No.

Q. Do you know Griswold pretty well?

A. Yes, I know him pretty well.

Q. Do you know his reputation for truth and veracity?

A. I won't believe anything Griswold says.

Q. Do you know his reputation for honesty and integrity, truth and veracity?

A. I never heard anybody would believe him.

Q. Is it good or bad? A. Very bad .

Q. Would you believe a statement of his under oath?

Mr. MAYNARD.—I object to this question on the ground that no foundation has been laid for it and for the preceding questions, and move for the reasons stated that the questions that have already been asked and the answers thereto be stricken out.

Q. Would you believe a statement made by Mr. Gris-

(Testimony of Oscar Muchenhirn.)

wold under oath where he was personally interested in the matter concerning which he was testifying?

Mr. MAYNARD.—I object to that for the reason that no foundation has been laid for such a question.

A. If he made money out of it, he will testify the way he will make the money of course.

Q. At the time when you went down to make the final proofs, Mr. Muckenhirn, you stated the lands could not be used for anything except the timber that was on it, it was not valuable for any other purpose; that was true, was it? A. Yes.

Q. Now, you are also asked this question, "Have you sold or transferred your claim to this land since making your sworn statement, or have you directly or indirectly made any agreement or contract, in any way or manner, with any person whomsoever, by which the title which you may acquire from the Government of the United States may inure, in whole or in part, to the benefit of any person except yourself," and you answered "No." Is that true? A. Yes.

Q. You were asked this question also: "Do you make this entry in good faith for the appropriation of the land exclusively to your own use and not for the use and benefit of any other person?" your answer was "Yes, sir." Was that true? A. Yes.

Q. You were also asked this question: "Has any other person than yourself, or has any firm, corporation, or association, any interest in the entry you are now

(Testimony of Oscar Muchenhirn.)

making, or in the land, or in the timber there?" your answer is "No, sir." Was that true? A. Yes.

Q. Now, as I understand you, you preferred to sell the land rather than to mortgage it and then pay 12 per cent interest?

A. Yes, he wanted twelve per cent interest, Mr. Pound.

Q. You did not like to pay that much interest?

A. No.

Q. Instead of doing that you preferred to sell the land and get what you could for it?

A. I preferred to sell it to him.

Q. Was that the first time that you had offered to sell this land? A. Yes.

Q. To any person? A. Yes, to any person.

Q. Did you consider that this amount which you paid Tepper for going down there was an exceptionally heavy charge?

A. I paid him $25.00 for coming down, then I paid Griswold $3.50.

Q. Well, now, was that too much to pay Tepper for three days' work with his team?

A. He told me he would not go down for anything less.

Q. He furnished the team?

A. Yes, he furnished the team.

Q. This $25.00 included payment for the team as well as going down there? A. Yes.

(Testimony of Oscar Muchenhirn.)

Redirect Examination.

(By Mr. MAYNARD.)

Q. How long have you been deaf?

A. Oh, about eight or nine years.

Q. What caused it?

A. I don't know; I got a little deaf when I was a little boy; I was sick from scarlet fever, but it got worse eight or nine years ago. I was not very bad until eight or nine years ago.

Q. Now, how far is your claim from the river?

A. The homestead or the timber and stone claim?

Q. The timber and stone claim.

A. The timber and stone claim is about a mile and a half from the river, from Clearwater river.

Q. Now, you say that you did have a conversation with Mr. Griswold in regard to the land, in regard to how much you were going to get? A. No.

Q. Did you say that a few days before you sold to Cobban you had a conversation with him in which he asked you how much you were going to get?

A. No, he asked me how much money I wanted, and I told him I would take all I could get.

Q. How much did you want?

A. I did not know that it was anything about the land at all; I thought he was only joshing; he only asked me how much money I wanted and I says, "I will take all I can get."

Q. How much you wanted for what?

A. I didn't know what it was for. I didn't know it

(Testimony of Oscar Muchenhirn.)

was for the land then; I guess it was for the land he meant.

Q. Whereabouts were you when he asked you that?

A. I was at Clearwater Postoffice.

Q. That was on his place?

A. It was Steve Tepper then, Steve Tepper and Johnnie Gilles had the place then.

Q. How long was that before you made your final proof? A. Two or three days.

Q. Before you made your proof? A. Yes.

Q. And before you went down to Missoula?

A. Yes.

Q. Mr. Griswold then asked you at that time and place how much you wanted for your land?

A. He did not say how much I wanted for the land, he only said how much money do you want.

Q. You knew what he was referring to, didn't you?

A. No, I thought he was joshing.

Q. Didn't know anything about it? A. No.

Q. When you said you wanted to get as much as you could for it, what did you mean by that?

A. I said I would take all I could get.

Q. For what?

A. I didn't know what he meant; I was only joshing, just the same as he was.

Q. Do you swear now that when he spoke to you in that way that you didn't know what he referred to?

A. I did not know what he was referring to; he says: "How much do you want? And I says, "I will take all

(Testimony of Oscar Muchenhirn.)

I can get." I didn't know whether it was about the land or anything else.

Q. Had he ever spoken to you that way before?

A. Yes, lots of times; hadn't spoken about money; had spoken about everything. I had known him four years then.

Q. How many times had he spoken to you in the same way before this time?

A. I do not know. He spoke that way for three or four or five years, all the time I had known him.

Q. For three or four or five years, all the time you had known him, he talked to you just that way?

A. Just joshing all the time.

Q. And at that time and place you did not know that he was talking about this land?

A. No, I did not know that he was referring to any land.

Q. Or this entry? A. No.

Q. Didn't tell you that he could not give you but $50.00 for that piece?

A. I never heard him speak about $50.00; I never heard him say so.

Q. Never said anything to you about it?

A. No.

Q. And you never had any conversation with him in regard to this land, about how much you were to get for it or how much he would pay you or anything about it?

A. No, sir.

Q. What did he go out there for to your piece?

(Testimony of Oscar Muchenhirn.)

A. He was looking over all the rest of the timber there; he was looking over the whole township in there, looking over the timber.

Q. Why did he look over your piece?

A. I don't know; I was not with him when he looked over it; he only told me he had seen it.

Q. He told you he had seen it, did he tell you how much timber there was on it?

Mr. BICKFORD.—We object to that as hearsay.

A. No, he only told me he had seen the land.

Q. And after he had seen it, then he asked you how much you wanted for it?

A. No, he told me he had seen it the day I proved up in Missoula.

Q. You swear that he did not offer you a certain price? A. Yes.

Q And that you told him that you would see Cobban and get more?

A. No, never spoke to Cobban about more, I spoke to Cobban about borrowing the money.

Q. When he was up there at the hotel at the Clearwater? A. Yes.

Q. You didn't say anything to him about how much you were to get? A. No.

Q. You didn't say anything to Griswold afterwards, that Cobban had told you there that he would give more than he was willing to pay for the land in Cobban's interest?

A. No, never spoke to anybody about that.

OSCAR MUCKENHIRN.

(Testimony of Mrs. Martha E. West.)

Subscribed and sworn to before me this 14th day of March, 1902.

HENRY N. BLAKE,
Examiner.

Mrs. MARTHA E. WEST, a witness on behalf of complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. MAYNARD.)

Q. Where do you live, Mrs. West?

A. In Stevensville, Montana.

Q. Are you a married woman? A. I am.

Q. What is your husband's name?

A. His name is West.

Q. What is his first name? A. David.

Q. When were you married to him?

A. I was married last June.

Q. What was your name previous to your marriage?

A. Martha E. Wright.

Q. Were you born Wright—was that your maiden name or were you a widow?

A. That was my maiden name; that was father's name also; also my mother's.

Q. So you were not married until last June?

A. I was not married until last June.

Q. How long have you lived in Stevensville?

A. A little over ten years.

Q. Previous to last June, who did you live with?

A. I lived with a friend by the name Hatch.

(Testimony of Mrs. Martha E. West.)

Q. What did you do for a living?

A. I was a dressmaker.

Q. Did you follow the occupation of a dressmaker during those ten years that you lived in Stevensville previous to your marriage? A. Most of the time.

Q. You made an entry under the Stone and Timber Act? A. I did.

Q. At that time did you have any real or personal property?

A. No—well, I had a very little personal property and a little household goods; I had no real estate.

Q. Had a few household goods? A. Yes.

Q. Do you remember leaving your home in Stevensville and going up into the mountains for the purpose of making an entry under this Stone and Timber Act?

A. I do.

Q. Who did you go with?

A. Mr. and Mrs. Catlin.

Q. That is, Major Catlin? A. Major Catlin.

Q. When did you come to this town to appear as a witness?

A. I came Tuesday; I started from home Sunday morning in obedience to a summons which required me to be here Monday morning. I had to leave Sunday to be here Monday; I stopped in Missoula, where I received word from the Marshal telling me that I would not be required to be here until Wednesday.

Q. Who did you go to Missoula with?

A. Mrs. Catlin came up the same time.

(Testimony of Mrs. Martha E. West.)

Q. You have been with her ever since?

A. In Helena?

Q. Yes? A. Yes.

Q. This is Thursday? A. Yes.

Q. You are stopping at the same place? A. Yes.

Q. And it was with this Mrs. Catlin and her husband, Major Catlin, that you went from your home in Stevensville up into the mountain?

A. I will modify my reply to that. I went from Stevensville alone, from Missoula; I went in company with Mr. and Mrs. Catlin up the Blackfoot.

Q. How did you go? A. From Missoula?

Q. Yes? A. Went in a team.

Q. Anybody else with you?

A. Mr. and Mrs. Catlin.

Q. Just you three? A. Just us three.

Q. When you left Stevensville, where did you go when you reached Missoula? A. I went to Mr. Catlin's.

Q. Did you start that same day for the mountains?

A. Yes.

Q. What time did you arrive at Missoula?

A. I do not remember the exact hour, but it was early in the morning; the train left Stevensville very early, and I was an hour coming down; I think probably it was eight o'clock when we reached Missoula. I do not remember the train time; the trains in the Bitterroot valley are very uncertain.

Q. And that same morning was it that you and Major Catlin started for the mountains?

(Testimony of Mrs. Martha E. West.)

A. The same day.

Q. In the forenoon or afternoon?

A. In the forenoon.

Q. Do you know where you stopped the first night?

A. We stopped at Mr. Griswold's, on the Clearwater, the junction of the rivers.

Q. Did you get up there the first day?

A. We did.

Q. You had made an appointment, then, with the Catlins to go up with them to the mountains for the purpose of taking up this location prior to your leaving Stevensville?

A. Yes, I had asked Mr. Catlin to go with me.

Q. When was that?

A. When I asked—Oh, I don't know; some time before; but as far as the date is concerned, I cannot tell; it was a month or two, I don't know how long.

Q. A month or two before you did go you asked Mr. Catlin to take you? A. Yes.

Q. What time did you reach the Clearwater, Mr. Griswold's? A. In the evening.

Q. Do you know when you returned back from the Clearwater to Missoula? A. You mean the date?

Q. I do not mean the date of the month or the week.

A. I think it was on Sunday; I think it was the third of September.

Q. What I meant was how long after you arrived at the Clearwater? A. We stayed there two nights.

(Testimony of Mrs. Martha E. West.)

Q. That is, you arrived at night, and stayed there the next day? A. And the next day.

Q. Stayed there the next day and the night of that day, and started for home the next morning? A. Yes.

Q. So you were one day in the mountains?

A. Yes.

Q. Were you ever there before? A. No.

Q. Have you ever been there since? A. No.

Q. On this one day you spent in the mountains, what did you do?

A. We went out to the land that we were to file on and located it.

Q. Who went with you?

A. Mr. and Mrs. Catlin and Mr. Kilbourn.

Q. Mr. Elmer R. Kilbourn?

A. Well, I don't know his name; Mr. Kilbourn is all I know.

Q. Mr. E. R. Kilbourn?

A. I went with Mr. Kilbourn; I don't know his initials; it is this gentleman that is here.

Q. This man that is sitting here? (Indicating.)

A. Yes.

Q. Did Mr. and Mrs. Catlin go with you?

A. Yes.

Q. They went with you when you went with Mr. Kilbourn? A. Yes.

Q. You may state how you went, and what you did that day?

(Testimony of Mrs. Martha E. West.)

A. Well, we went with the same team we took to the Clearwater up into the mountains, and went on the land.

Q. Was it a double? A. Yes, double-seated.

Q. Mr. Kilbourn occupied the vacant seat then?

A. Yes.

Q. How far was it from the hotel?

A. I cannot tell you. I think I knew at the time, but I have no recollection. I do not remember now; not very far. I do not think more than three or four miles; but I have no certain recollection of that.

Q. You may state as to whether it was a steep, rocky, mountainous country?

A. It seemed to me extremely so.

Q. Well, I wish you would describe his double team that you four people went with into the mountains, as to what you did with it. Just state, Mrs. West, in your own way, just what was done; what did you do?

A. Well, I stated what we did. We went up on the land, Mr. Catlin and Mr. Kilbourn looked for the corners of the land and found them, and Mrs. Catlin and I wandered around part of the time. We gathered gum off the spruce trees, then we had our lunch; that is really all that I can recall of any moment that happened to us that day.

Q. What time did you get back to the hotel?

A. I think about four o'clock; I am not positive as to the time; it was about supper-time; but just when, I do not remember.

Q. Stayed there that night and went home the next morning? A. Yes.

(Testimony of Mrs. Martha E. West.)

Q. On reaching Missoula did you then file on this land?

A. The next morning.

Q. Just please look at this; is that your signature?

A. It is.

Mr. MAYNARD.—I read from the statement:

"Land Office at Missoula, Montana,
September 4th, 1899.

I, Martha E. Wright, of Stevensville, County of Ravalli, State of Montana, desiring to avail myself of the provisions of the act of Congress etc.—for the purchase of the south half of the southwest quarter, the northeast quarter of the southwest quarter, and lot 4 of section 12, township 15 north of range 15 west, in the district of land subject to sale in Missoula, Montana." Where, Mrs. West, were these blanks filled out? A. In the land office.

Q. Who filled them out?

A. Well, I don't know. I suppose Mr. Catlin; I do not remember.

Q. Well, were you present when they were filled out?

A. Yes.

Q. If you were present when they were filled out, why is it that you are unable to state who did fill them out?

A. My poor memory; not that I do not want to state who filled them out, but simply I do not remember a great many things that occurred at that time in connection with that matter; it is simply because I have a very poor memory, that is all; but I suppose Mr. Catlin did fill them out.

(Testimony of Mrs. Martha E. West.)

Q. At that time I see that you gave your age as forty-nine years? A. Yes.

Q. That was September 4th, 1899? A. Yes.

Q. You may state as to when, after filing, you returned to your home in Stevensville?

A. I did, I think, the same day. I think the train went up in the afternoon at that time—I know it did. I went home the same day.

Q. Did you remain there during the sixty days?

A. In Stevensville?

Q. Yes? A. Yes.

Q. Do you remember while you were at the land office who gave the description of the land?

A. Mr. Catlin.

Q. You knew nothing of the description yourself, did you? A. No.

Q. Who gave the names of the witnesses?

A. I don't know.

Q. You didn't, did you? A. No.

Q. I see that in the original papers which I have here that it names as witness E. R. Kilbourn, of Ovando, Montana, C. L. Griswold, of Clearwater, Montana; John B. Catlin of Missoula, Montana, and Martha E. Wright of Stevensville, Montana, and Lizzie T. Catlin of Missoula, Montana. The names of Martha E. Wright and Lizzie T. Catlin both appear in the notice of publication together.

Mr. BICKFORD.—At this point we desire to ask counsel whether or not the notice published is not what is

(Testimony of Mrs. Martha E. West.)

known in land office parlance as a double notice, and if it is, we desire to have it so appear in the record.

Mr. MAYNARD.—That is what it is.

Q. When you left your home, Mrs. West, for the purpose of making your final proofs in the case, you knew of the fact that a certain amount of money would have to be paid to the government for its land, didn't you?

A. Yes.

Q. Did you know how much? A. Yes.

Q. How much? A. It was $2.50 an acre.

Q. For the 160 acres? A. Yes.

Q. Did you have the money with you at the time you left your home? A. I did not.

Q. From whom were you to get the money?

A. I was to borrow it from Mr. Catlin.

Q. Did you know as to whether it was Mr. Catlin or Mr. Cobban's money that you were to borrow through his agent, Mr. Catlin?

Mr. BICKFORD.—We object to that as leading.

A. Mr. Cobban's name had not been mentioned to me.

Q. But you were to borrow it from Mr. Catlin?

A. Yes.

Q. Did you, as a matter of fact, get the money from Mr. Catlin?

A. Received it into my own hands to pay into the land office?

Q. Yes.

A. No, Mr. Catlin paid it for me.

Q. So you did not receive any money at all from him?

(Testimony of Mrs. Martha E. West.)

A. Not for the final proof.

Q. And had you paid out any money at all by way of expenses up to this time?

A. I had paid my own expenses back and forth from Stevensville.

Q. Nothing else? A. No, that is all.

Q. How far is Stevensville from Missoula?

A. It is 28 miles from the station.

Q. What is the round trip fare?

A. At that time, 4 cents a mile; I do not remember just what the round trip was.

Q. It will be 4 times 28?

A. There is always a reduction in round trip; at least then, but what it was at that time, I do not remember exactly.

Q. Haven't you some idea?

A. When we paid five cents a mile the round trip was $2.45, but when it was 4 cents, I don't know what we paid for the round trip; if it was five cents it would be $2.45.

Q. Two dollars and forty-five cents for the round trip; you made two trips?

A. Two trips back and forth; yes.

Q. So all the money you paid out was less than six dollars?

Mr. BICKFORD.—We object to that because it is leading, and because it is an assumption of counsel and not a statement of fact by the witness.

A. Well, I don't know.

(Testimony of Mrs. Martha E. West.)

Q. Assuming it was five cents a mile, the round trip would be $2.45? A. Yes.

Q. That would be less than five dollars for two round trips?

By Mr. BICKFORD.—We object now to the assumption of counsel and to the statement of counsel made to the witness, because it calls for not a statement of fact on the part of the witness, but is simply a matter of calculation which is partly made by counsel at the time he is propounding the alleged question, it is therefore leading, and, moreover, is irrelevant and immaterial.

A. Yes.

Q. Now, then, Mrs. West, can you recall any other expense item you paid out besides your two round trips between Stevensville and Missoula?

A. Hack fare both in Stevensville and in Missoula.

Q. How much would that be?

A. Twenty-five cents each way, each trip.

Q. Anything else? A. No, I think not.

Q. Then on this same day that you gave your final testimony and Mr. Catlin paid this money into the land office for the purpose of your land, you sold it to Mr. Cobban, didn't you? A. I did.

Q. Do you remember whether you went to the land office and the money was paid in by Mr. Catlin before dinner? A. At the land office?

Q. Yes. A. Yes.

Q. And did you sell before dinner, too?

(Testimony of Mrs. Martha E. West.)

A. Well, I don't remember what hour of the day it was when we got through.

Q. Did you go right from the land office to Mr. Cobban's office? A. No.

Q. What did you do in the meantime?

A. I went to the notary public's office to execute the deed.

Q. Who went with you? A. Mr. Catlin.

Q. What was the notary public's name?

A. Stoddard.

Q. Who was in Mr. Stoddard's office at the time you signed the deed?

A. Mr. and Mrs. Catlin and myself.

Q. Mr. and Mrs. Catlin and yourself? A. Yes.

Q. In Mr. Stoddard's office? A. Yes.

Q. How long were you there?

A. A very short time; I could not say; I did not time myself.

Q. Well, Mrs West, will you be kind enough to give us your very best recollection on that subject?

A. It was a very short time, Mr. Maynard. It did not take very long, I know; perhaps fifteen minutes—probably not any more than that.

Q. What was done there?

A. Well, we signed the deed before the notary pu

Q. Who had the deed?

A. Mr. Catlin, I suppose; of course, Mr. Catlin had it, I did not have it.

Q. Was Mrs. Catlin's deed signed at the same ti

(Testimony of Mrs. Martha E. West.)

A. Yes.

Q. Then, as a matter of fact, while you cannot remember the time you were there, you were there simply for the time it would take to sign your name to the deed—the Catlin deed, and leave the office?

Mr. BICKFORD.—We object to that as leading.

A. I think so.

Q. Now, then, on this day after that you received some money for yourself, didn't you? A. Yes.

Q. How much did you receive?

A. One hundred dollars.

Q. Who paid you that? A. Mr. Catlin.

Q. Whereabouts was that?

A. In Mr. Cobban's office.

Mr. MAYNARD.—I read from the certified copy of the deed which has been offered in evidence. "This indenture made the tenth day of November in the year of our Lord one thousand eight hundred and ninety-nine, between Martha E. Wright, a single woman, of Stevensville, Ravalli County, Montana, party of the first part, and R. M. Cobban of Missoula, Missoula County, Montana, party of the second part, witnesseth, that the said party of the first part for and in consideration of the sum of eight hundred dollars, lawful money of the United States of America, to her in hand paid by the said party of the second part, receipt whereof is hereby acknowledged, does by these presents grant, etc., all the real property situated in Deer Lodge County, State of Montana, de-

(Testimony of Mrs. Martha E. West.)

scribed as follows; the south half of the southwest quarter, the northeast quarter of the southwest quarter and lot 4 in section 12, township 15 north, of range 15 west, Montana Meridian."

Mr. BICKFORD.—We move to strike this out as being no testimony of any character, no question asked and no question answered.

Mr. MAYNARD.—And the certificate of the notary is:

"State of Montana. } ss.
County of Missoula.

On this tenth day of November, in the year 1899, before me, Fred C. Stoddard, a notary public in and for the county and State aforesaid, personally appeared Martha E. Wright, known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that she executed the same.

In witness whereof, I hereunto set my hand and affixed my notarial seal the day and year first above written.

FRED C. STODDARD,
Notary Public in and for Missoula County, Montana."

Cross-examination.

(By Mr. BICKFORD.)

Q. How long have you know Mr. Catlin, Mrs. West?

A. Very nearly ten years.

Q. During that time, have you been intimately acquainted with Mr. Catlin and with his wife?

A. I have.

(Testimony of Mrs. Martha E. West.)

Q. They have been in Stevensville part of that time?

A. No.

Q. Their residence there, then, was before your arrival in Stevensville? A. Yes.

Q. As I remember the facts, they once did live in Stevensville? A. They did.

Q. And have a great many friends and acquaintances there? A. Yes.

Q. With whom did you first talk about the propriety of availing yourself of the Timber and Stone Act of the United States?

A. I do not know; there was a good deal of talk at different times in Stevensville about it, amongst people there. I do not remember who talked about it; that is, I knew that such a thing was to be done, but the first time I thought of doing it myself I talked to Mr. Catlin about it.

Q. You went to Mr. Catlin yourself for the purpose of talking over with him? A. Yes.

Q. Did you know at that time that Mr. Catlin was a land attorney, was regularly engaged in the business of conducting land contests, land entries, before the United States land office? A. Yes.

Q. Do you know how long he has been engaged in that business? A. No.

Q. He has been engaged in that work ever since you have known him, hasn't he? A. I think so.

Q. Now, at the time when you went to see Mr. Catlin about this matter, did you make any bargain or agree-

(Testimony of Mrs. Martha E. West.)

ment with him to sell him the land after you had made your final proof upon it? A. No.

Q. Did he hire you to make an entry of this land for the purpose of selling it to him afterwards?

A. No.

Q. Was there anything said by Mr. Catlin about your selling the land to him, or to any one else, at the time when you talked to him about it?

A. He told me when I made my final proof I could sell it; I knew I could.

Q. Then, as a matter of fact, there was no bargain or agreement upon your part prior to making your entry in the land office that you would sell the land to anybody? A. No.

Q. At the time when you went onto this land, did you look over the land to determine whether the land was valuable for agriculture?

A. I did not have to look over it very much to see that it was good for nothing but stone and timber.

Q. Did you come to the conclusion, after looking over the land, that it was more valuable for timber and stone than it was for agriculture?

A. That is all it was valuable for.

Q. You did, as a matter of fact, go round over this land, didn't you?

A. Yes.

Q. And looked at it?

A. Yes, as much as possible.

Q. How long were you on the land for this purpose?

(Testimony of Mrs. Martha E. West.)

A. I must have been there two or three hours, perhaps longer.

Q. Did you make a sufficient examination of the land so as to determine in your own mind that it was chiefly valuable for stone and timber? A. I did.

Q. Now, at the time when you returned to the land office, as I understand from your examination-in-chief, Mr. Catlin was your attorney in this matter?

A. He was. I placed the affair in his hand entirely, trust him entirely that he would do the best he could for me, sell the land for me.

Q. Did you ever authorize him to bargain or sell the land for you at all?

A. Well, no, only at that time, if it could be sold I wanted it sold.

Q. If it could be sold after the final proof you were willing that it should be?

A. Willing it should be; yes.

Q. As I understand you, you supposed you were borrowing the money from Mr. Catlin to pay for the land?

A. Yes.

Q. And that Mr. Catlin would make whatever papers might be necessary in order for you to enter the land?

A. Yes.

Q. At the time when you made your application at the land office as testified to by you, you say, "I verily believe the land is not valuable for gold, silver, cinnabar, copper, or coal. You also state that you have made no other application under said acts. That I do not

(Testimony of Mrs. Martha E. West.)

apply to purchase the land above described on speculation, but in good faith, to appropriate it to my own exclusive use and benefit, and that I have not, directly or indirectly, made any agreement or contract, or in any way or manner, with any person or persons whomsoever by which the title I may acquire from the government of the United States may inure in whole or in part to the benefit of any person except myself." That was true, was it, Mrs. West? A. That is true.

Q. This was made at Missoula, Montana, September 4th, 1899; on November 10, 1899, you appeared before the land office with your witnesses and in your testimony before the land office you were asked the following questions: "Have you sold or transferred your claim to this land since making your sworn statement, or have you directly or indirectly made any agreement or contract, in any way or manner, with any person whomsoever, by which the title which you may acquire from the Government of the United States may inure, in whole or in part, to the benefit of any person except yourself?" to which you answered "No, sir, I have not." Was that answer correct? A. That was correct.

Q. You were also asked this question: "Do you make this entry in good faith for the appropriation of the land exclusively to your own use and not for the use and benefit of any other person?" to which you answered "I do." Was that answer correct? A. It was.

Q. You were also asked: "Has any other person than yourself, or has any firm, corporation or association any

(Testimony of Mrs. Martha E. West.)

interest in the entry you are now making, or in the land, or in the timber thereon?" Your answer is, "No." That answer was correct, was it? A. It was.

Q. You never had any talk with C. L. Griswold about this land, did you? A. No.

Q. Do you know Mr. Griswold when you see him?

A. I did know him at that time. I do not know if I would know him now; it is some time since I saw him.

Q. Did you have any talk with E. R. Kilbourn about the land?

A. Mr. Kilbourn went with us to look the land over, but I had no conversation about it.

Q. About it or about selling the land? A. No.

Q. Did you as a matter, of fact, have any conversation with anybody about selling the land prior to the time when you did sell it? A. No.

Q. As I understand you, your sale was made after your final proof had been made at the land office and your final receipt had been given you for the land?

A. Yes.

Q. You never had had any talk about selling the land prior to that time? A. No.

Q. Speaking about going to the office of a notary public in Missoula, do you know that you went to the office of the notary public directly from the land office, or was it some time during the day that you went to the office of the notary?

A. It was right from the land office.

(Testimony of Mrs. Martha E. West.)

Q. You were acquainted with the notary public or him with you?

A. I had simply been introduced to him some time before, but that was all, did not know him at all.

Q. Then as I understand it you returned to Stevensville on the same day? A. That evening.

Q. In the afternoon of the same day? A. Yes.

Q. This business was completed before you returned to Stevensville? A. Yes.

Q. Do you remember where you took your mid-day meal that day?

A. I think I dined with Mrs. George Stewart, the Episcopal minister's wife in Missoula.

Q. It was after you came from the land office you did that? A. Yes.

Q. Was it after you had been to the land office that you did it? A. Yes.

Q. Now, when was it and from whom did you receive pay for this land?

A. Mr. Catlin paid me the money after the deed was made out.

Q. At his own office was it?

A. His office—I suppose he was in the office with Mr. Cobban.

Q. It was in the Higgins Block in Missoula?

A. Yes.

Q. Was it in cash or in a check?

A. It was in bills.

(Testimony of Mrs. Martha E. West.)

Redirect Examination.

(By Mr. MAYNARD.)

Q. Now, you said in reply to counsel on the other side, "I trusted Mr. Catlin entirely, and that he would do the best he could for me in the sale of the land, "that was true, was it? A. Yes.

Q. Your purpose in taking up the land was for the purpose of the profit you could make in selling it?

Mr. BICKFORD.—We object to that as leading.

A. I expected to sell it.

Q. You expected to sell it?

A. Yes, at least I supposed I would sell it.

Q. You had information to that effect which led you to suppose that you could sell it previous to your going to Major Catlin in the first place.

Mr. BICKFORD.—We object to that as leading.

A. I never had had any conversation with anyone, nor heard anything about it, only that this land could be taken up, and I supposed anyone that took up this land they sold it.

Q. Who did you hear this from?

A. I do not remember. I heard a great many things I do not pay any attention to, but I heard that a good many times in the valley; there was a good many stone and timber claims taken up in the Bitterroot Valley some time before this, I had heard about. Different ones had said, "Why don't you take up one?" I do not remember who said it.

(Testimony of Mrs. Martha E. West.)

Q. Now, then, different ones asked you why you did not take up a claim, wasn't there something said as to how much you could get, how much they were getting?

A. No, I never knew.

Q. You never heard from anybody at all, in all of the talk that was had in regard to taking up these claims, as to how much people were getting?

A. I heard very little about it. Stevensville is a very small town and we hear very little that is going on outside. There are very many things go on in Missoula County and Missoula, all around that I never hear anything about.

Q. So, that previous to your going to Major Catlin for the purpose of asking him to get a claim for you, when you went there to see him for that purpose, you say that you had no information, nor had heard none as to what you would be likely to make if you did get a claim?

A. No. That is what I said.

Q. You understood that you could make something, didn't you?

A. Well, I do not know that I understood that very thing, but I supposed that if I took up a claim I could sell the timber.

Q. And the profit was what you wanted?

A. Naturally, yes.

Q. And when you went to him you had no money of your own?

A. Well, no, I had no very great amount of money.

(Testimony of Mrs. Martha E. West.)

Q. You did not have any at all?

A. Yes, I was not exactly penniless. I did not have anything laid up to buy land with.

Q. That is what I mean?

A. I did not have money enough to take up the land and pay for it.

Q. So you knew you would have to get the money from somebody? A. Yes.

Q. When you went to Major Catlin, hadn't you heard before this time that he was helping people to take up claims? A. Paying their expenses?

Q. Yes.

A. No, I knew nothing about it at all, I had not talked with Mr. Catlin and I had not talked with any one else about it. I had been west and I had just come back to Montana. I had been in Spokane for some time, and when I came back I heard of these timber claims, it was that time.

Q. You heard about these timber claims?

A. Yes, I had not heard anything about how they were doing, or anything about any money being paid, or anything of that kind, only I could take up a timber claim, I knew others had done this before.

Q. How did you know others had done this before?

A. Several different parties in the Bitterroot. I can recall other people living in the Bitterroot that took up stone and timber claims in the Bitterroot.

Q. In the Bitterroot valley? A. Yes.

(Testimony of Mrs. Martha E. West.)

Q. Whereabouts?

A. In the southern part of the valley; exactly where I do not know, because I am not very well acquainted with the valley, only around Stevensville, but it was south of Stevensville some distance, just where I do not know I know they were taken up there—these stone and timber claims in the valley.

Q. And you did not hear that Mr. Cobban was buying these claims? A. Not at that time.

Q. When did you hear that?

A. I do not remember when I first heard that Mr. Cobban was buying, only when I went down to Missoula and made my final proof Mr. Catlin told me that he would buy it if I wanted to sell it or sell it to some one else if I choose to.

Q. That was on the day you proved up and Mr. Catlin paid the money into the office, the day you sold to Mr. Cobban and got your hundred dollars? A. Yes.

Q. Now, then you say you did hear, as I understand you, that Mr. Cobban was buying these things?

A. I did not say that Mr. Maynard, you misunderstood me.

Q. I am simply asking you now as to your recollection, following the suggestion of my brother on the other side as to what your answer was to my question a few minutes ago as to just when previous to the day when you sold to Mr. Cobban you heard that he was buying these claims?

A. Really, I don't know when I heard about it.

(Testimony of Mrs. Martha E. West.)

Q. You cannot say when you did hear?

A. No, I cannot say when.

Q. Are you unable to state from whom you hear it?

A. Yes, I could not state who I heard it from, only what I saw in the paper transaction of real estate, I did have an opportunity to look at the papers. I did see later that Mr. Cobban had bought some land, but up to that time I had heard very little about it.

Q. How long was that in your best recollection before you went to make your final proof?

A. I do not remember anything about it.

Q. You cannot tell that?

A. I cannot tell whether I heard anything about it before or not.

Q. And previous to your getting this hundred dollars from Mr. Catlin as you have now sworn, hadn't you heard at all from any source that people that were taking up claims under the Stone and Timber Act as you did, were getting this amount?

Mr. BICKFORD.—We object to that as leading.

A. No, I did not. I did not know what they got. I saw in some different deeds afterwards that they had sold land to Mr. Cobban, I never knew what anyone got, never thought of asking.

Q. So, then, as I understand it from your testimony, Mrs. West, from the time you went to see Mr. Catlin first about from that time, during all this history that you have testified to, that in the words of the answer to

(Testimony of Mrs. Lizzie T. Catlin.)

Judge Bickford you trusted him entirely that he would do the best he could for you in the sale of the land?

A. Yes.

MARTHA E. WEST.

Subscribed and sworn to before me this 14th day of March, 1902.

HENRY N. BLAKE,
Examiner.

Thursday afternoon, two o'clock, March 13th, 1902.

Hearing resumed pursuant to adjournment.

Mrs. LIZZIE T. CATLIN, a witness called by the complainant, having been first duly sworn, testified as follows:

Direct Examination.

(By Mr. MAYNARD.)

Q. Mrs. Catlin, where do you live?

A. In Missoula.

Q. What is your husband's name?

A. John B. Catlin. J. B. Catlin, he always signs his name.

Q. You were here in the room of Judge Blake, were you not? A. Yes, I was here this forenoon.

Q. And you heard all of the testimony of Mrs. West, did you not? A. Yes, I heard it.

Q. I think that on that account we ought to be able to get along with your testimony very rapidly, and so on. How long have you lived with your husband in Missoula?

(Testimony of Mrs. Lizzie T. Catlin.)

A. In Missoula? Oh, we have lived there off and on since 1891, not continuously but at different times.

Q. Do you know whether your husband is any relative of Mr. Cobban's?

A. No, he is no relation whatever.

Q. And you are not? A. No, sir.

Q. How old a man is your husband?

A. He is sixty-four.

Q. And you are how old, Mrs. Catlin?

A. Fifty-nine.

Q. How long has your husband, Major Catlin, been associated in this business with Mr. Cobban?

By Mr. WALSH.—We object to that for the reason that it assumes a state of facts that has not been testified to. That is to say, that Major Catlin has been associated in business with Mr. Cobban.

By the EXAMINER.—Now, you may answer.

A. Am I to answer that question?

By the EXAMINER.—Yes, whenever the objection is made, you wait until the objection is put down, and then you answer the question.

A. Yes, about three years, I think, since he first commenced to be employed by Cobban & Dinsmore.

Q. Before he entered in the employ of Cobban & Dinsmore, what did your husband do, Mrs. Catlin?

A. Well, we were not living at Missoula at that time. We lived up in the valley at Hamilton, and Mr. Catlin was in the real estate business and was a notary public,

(Testimony of Mrs. Lizzie T. Catlin.)

etc. At least, I should say he was a United States Commissioner.

Q. And do I understand that when he entered into the employ of Messrs. Cobban & Dinsmore you moved from Hamilton down to Missoula? A. Yes, sir.

Q. Do you know just what the nature of your husband's engagement with the firm was?

A. No, I do not.

Q. What was their business?

A. Well, at that time, I think it was real estate. I cannot tell exactly just what their business was.

Q. Where did—where was the office of Cobban & Dinsmore where your husband was at work?

A. In the Higgins' block. Well, not at first; they had another office, but after that they finally bought the Higgins' Block and moved in there.

Q. What is that?

A. Not at first. When Mr. Catlin went to working for them they were in another building, but subsequently they bought the Higgins' Block and moved into it and Mr. Dinsmore's office is in there now.

Q. Are you still living in Missoula?

A. Yes, sir.

Q. Is your husband still working for Mr. Cobban?

A. No, he is employed with Mr. Dinsmore.

Q. He is what?

A. He is working for Mr. Dinsmore.

Q. Is the firm of Cobban and Dinsmore dissolved?

A. Yes, sir.

(Testimony of Mrs. Lizzie T. Catlin.)

Q. Do you know of your husband owning any real estate at the time you moved to Missoula?

A. Yes, we have real estate at Stevensville.

Q. Just what is that place, Mrs. Catlin?

A. Well, we have a ranch adjoining Stevensville.

Q. What is that ranch? How much is it?

A. I think it is three forties.

Q. Three forties?

A. I think that is what it is.

Q. Did your husband homestead that?

A. No, no, it was homesteaded by another man, and then my husband bought it from this person.

Q. Did he—what do I understand by that. Did he buy the homesteader's right? A. Yes, sir.

Q. Before the homesteader got title to it?

A. No, after.

Q. Did you ever live on that place?

A. No, he bought it after the title was secured.

Q. This 120-acre ranch? A. Yes, sir.

Q. And that is how far from Stevensville?

A. Oh, perhaps a quarter of a mile. It just adjoins the townsite.

Q. You farmed that, did you?

A. Yes, some of the time.

Q. What did you the other part of the time?

A. We didn't do anything with it.

Q. Left it vacant?

A. Yes, it is there for anybody that wants it. If

(Testimony of Mrs. Lizzie T. Catlin.)

not, it is left there; if anybody wants it we rent it, and if not, it is idle.

Q. What other real estate did he have, Mrs. Catlin, that you know of?

A. Well, we had real estate in Stevensville at one time—considerable of it, but he has disposed of it at different times; I don't know just when. It is lots and I don't know whether he owns anything further besides the ranch or not.

Q. Can you think of any other piece of property that he owns? A. Not that he owns.

Q. The title in you? A. I beg your pardon.

Q. Is the title in you?

A. Yes, the title is in my name for this ranch.

Q. Just this ranch, and what is the other piece?

A. It is a town lot.

Q. The other is in your name?

A. Well, it is generally, I suppose.

Q. Can you think of any other piece of personal property, that he had? A. No, not of any consequence.

Q. Now, as I understand it from the testimony of your friend, Mrs. West, that you heard this morning, you and she and your husband left your homes—left your homes in Missoula and went up that way into the mountains? A. Yes.

Q. She stated that she had never been up there before, had you? A. Never.

Q. And previous to this visit, I mean since that visit

(Testimony of Mrs. Lizzie T. Catlin.)

with your husband and Mrs. West, and the one day that you spent there, have you been there since?

A. No, I have not.

Q. On this one occasion in your life that you made this visit up there in the mountains, can you state what your purpose was in going up there?

A. I went up to take up a timber claim.

Q. And you went up with Mrs. West and Mr.—your husband and Mr. Kilburn as she testified?

A. Yes, four of us went up together.

Q. Without asking you particularly and spending all the time going through this matter, are you able to state as to whether or not you would be able to answer the questions that I put to Mrs. West in the same way if they were again repeated to you?

A. I think so, just the same.

Q. I call your attention to this signature, Mrs. Catlin, on this statement. (Counsel shows witness paper purporting to be application of the witness to enter land under the Stone and Timber Act involved in this case.) Are you able to say whether that is your signature?

A. Yes, sir, it looks like my signature. It looks very much like it.

Q. Do you know your husband's handwriting?

A. Yes, sir.

Q. Whose handwriting is this in this blank? (Counsel refers to handwriting in the printed form upon the

(Testimony of Mrs. Lizzie T. Catlin.)

papers in the matter of the entry of the witness of the land in question.)

A. This?

Q. Yes, all of this.

A. Well, it looks like Mr. Catlin's writing. I think it is his.

Q. And he, Mrs. West said, had charge of her business in this connection, and I assume that Mr. Catlin took charge of this business for you.

A. Yes, entirely. I just left the whole business to him.

Q. So far as the—as making the filing and the advertising and the witnesses and so on, you knew nothing about that yourself?

A. No, I left that all for him.

Q. Yes, I read from the notice of publication which as I understand is known as a point or double advertisement in which the names of Martha E. Wright and Lizzie T. Catlin appear, and the witnesses names are E. R. Kilburn of Ovando, Montana and C. L. Griswold of Clearwater, Montana, John B. Catlin of Missoula, Montana, Martha E. Wright, Stevensville, Montana, and Lizzie T. Catlin, Missoula, Montana. When the time came to make your filing, you was with Miss Wright at the time, were you not? A. Yes, sir.

Q. And when you came to make your final proof, you was there? A. Yes, sir.

Q. The money to pay for the land was paid by whom?

A. By Mr. Catlin I understood.

(Testimony of Mrs. Lizzie T. Catlin.)

Q. Your husband? A. Yes, sir.

Q. And then you remember of going with Miss Wright to the notary's office on that same day and executing a deed?

A. Yes, we went directly from the land office to the notary's office.

Q. And you executed your deed? A. Yes, sir.

Q. The deed to which I call your attention, a certified copy of which has been offered in evidence, reads as follows: "This indenture, made the tenth day of November, in the year of our Lord one thousand eight hundred and ninety-nine, between John B. Catlin and Lizzie T. Catlin, husband and wife, of Missoula, Missoula County, Montana, parties of first part, and R. M. Cobban of Missoula, Missoula County, Montana, party of the second part, witnesseth, that for and in consideration of the sum of eight hundred dollars, lawful money of the United States of America to them in hand paid by the said party of the second part, etc., have conveyed forever the following described tract of land, to wit, the northwest quarter of section 12, township 15 north, range 15 west, Montana meridian. Which was acknowledged on the same day, the 10th of November, Fred C. Stoddard, a notary public in and for the county of Missoula, the day upon which—the tenth day of November, being the date upon which final proofs were made.

By Mr. WALSH.—We move to strike out the statement of the counsel for the reason that it is neither a statement or a question put to the witness, or an answer

(Testimony of Mrs. Lizzie T. Catlin.)

by the witness, but is a part of the paper which has already been admitted in evidence. We further object to the introduction of this deed in evidence, upon the ground that it appears from the deed itself, that the property therein referred to is situated in the county of Deer Lodge, State of Montana, and the lands alleged to have been fraudulently entered by the witness, and fraudulently by her conveyed to Mr. Cobban are situated in the district of lands subject to sale at the Missoula land office, which district does not embrace the county of Deer Lodge.

By Mr. MAYNARD.—To meet this objection I desire to have it appear in the record just what the records show themselves. I confess that I don't just fully understand the nature of the objection.

I read from the statement signed by the witness, in which it appears that she desired to purchase the northwest quarter of section 12, township 15 north, range 15 west, in the district of lands subject to sale at Missoula, Montana. In the notice for publication—the printed notice, it reads as follows:

"Missoula, Montana, September 4th, 1899, United States land office" and the description contained in that notice is, "Lizzie T. Catlin, of Missoula, county of Missoula, State of Montana, has this day filed notice in this office, her sworn number 317, for the purchase of the northwest quarter of section 12, township 15 north, of range 15 west." It was signed by the register, Elmer E. Hershey. The affidavit of publication contains the same description. In

(Testimony of Mrs. Lizzie T. Catlin.)

the application—in the testimony the claimant gave at the time of their making the final proofs, and the payment for the purchase of the land, Lizzie T. Catlin, being called as a witness, in her own behalf in the application for the purchase of the northwest quarter of the northwest quarter of section 15, township 15 north, range 15 west, she testified as follows: On the same day she made a deed and conveyed the land to Mr. Cobban, the land that is described in the same way, to wit: the northwest quarter of section 15, township 15 north, range 15 west, Montana meridian, situated in the county of Deer Lodge, State of Montana. Now, that is what we have got, and if there is any mistake, why—

By Mr. WALSH.—All this we move be stricken out as not being the testimony of any witness, nor an objection by counsel.

Q. Mrs. Catlin, when you gave this deed, after you executed, who did you give it back to? A. The deed?

Q. The deed of your land, yes?

A. I think Mr. Catlin took it.

Q. Did your husband pay you any money?

A. Not that day.

Q. Did you get some money? A. Yes.

Q. When?

A. I don't remember exactly, a day or two afterwards probably.

Q. How much did you receive?

A. One hundred and twenty-five dollars.

Q. And your husband paid you that?

(Testimony of Mrs. Lizzie T. Catlin.)

A. Yes, sir.

Q. Now, I call your attention, Mrs. Catlin, to the names of Mr. John H. Hardy and Avira M. Hardy. Do you know who they are, this Mr. and Mrs. Hardy?

A. Why, I think it is Mrs. Cobban's father, if I am not mistaken.

Q. What is that?

A. I think they are Mrs. Cobban's father and mother, if I am not mistaken.

Q. Did you—

A. I am not acquainted with them at all.

Q. You are not acquainted with them?

A. No, I never met them; I heard of them; they visited Missoula. They have children living there.

Q. What is that—they have children there?

A. They have children living in Missoula—that is, they visited there. I have never met them, and have not made their acquaintance.

Q. Mrs. Cobban's father and mother are the Hardys, are they not? A. Yes, that is the name.

Q. And they live in Massachusetts?

A. I believe they live somewhere east.

Q. And you have never met them?

A. No, sir, I have never met them.

Q. You have no personal knowledge of their making entries upon these lands?

A. No, sir, not of my own personal knowledge. I know nothing about it.

(Testimony of Mrs. Lizzie T. Catlin.)

Cross-examination.

(By Mr. BICKFORD.)

Q. As I understood you to say, you entrusted the transaction of this business entirely to your husband?

A. Yes, sir.

Q. He had before that time and for some years before that time been engaged in the land office practice as a land attorney, had he not? A. Yes.

Q. And was acquainted with the mode of procedure and the method pursued in the entry of public lands, I believe?

A. Yes, sir.

Q. Now at the time when you made your statement with reference to taking up the land upon your first filing, you had been upon the land and looked it over? A. Yes.

Q. Did you testify yourself at that time, Mrs. Catlin, that the land was more valuable at that time for the timber and stone than it was for agricultural purposes?

Q. Yes, sir.

Q. You knew that at the time you made the entry, did you?

A. Yes, sir, it was of no use for anything else.

Q. You said in your first application that you had never made any application under the Stone and Timber Act? A. No, sir, I had not.

Q. And you said, "I do not apply to purchase the land above described on speculation, but in good faith, to appropriate it to my own exclusive use and benefit, and that I have not directly or indirectly made any agreement or contract, or in any way or manner, with any person or per-

(Testimony of Mrs. Lizzie T. Catlin.)

sons, whomsoever, by which the title I may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except myself?"

A. Yes, sir.

Q. That was true, was it, at that time?

A. Yes, sir.

Q. Now, a period of something over sixty days elapsed before you went to the land office to make your final proof, at which time you went to the land office with your witnesses, and there made your final proof?

A. Yes, sir.

Q. And among other testimony that was given by you at that time I find this was further testified to by you: "Have you sold the land, or transferred your claim to this land since making your final statement, or have you directly or indirectly made any agreement on contract, in any way or manner, with any person whomsoever, by which the title which you may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except yourself?" A. I did.

Q. To which question you answered, "No." That answer was true, was it not, Mrs. Catlin?

A. Yes, sir, quite.

Q. This question was asked you also: "Do you make this entry in good faith for the appropriation of the land exclusively to your own use, and not to the use and benefit of any other person?" To which you answered, "I do; I purchased the land with my own money in which my husband has no interest or claim?" A. Yes, sir.

(Testimony of Mrs. Lizzie T. Catlin.)

Q. That answer was true, was it not, Mrs. Catlin?

A. Well, as to the money, Mr. Catlin got it. He got the money for me.

Q. Yes, but it wasn't his money. It was with your own money? A. Yes, that was the intention, I suppose.

Q. That answer was true, was it? A. Yes, sir.

Q. Now, question fifteen was asked you as follows: "Has any other person than yourself, or has any firm, corporation, or association any interest in the entry you are now making, or in the land, or in the timber thereon?"

Q. To which you answered "No." That answer was correct, was it? A. Yes, sir, that was correct.

Q. In other words, when you got title to the land it was your own land, and not the land of anybody else?

A. Yes, sir.

Q. You were then, were you not, at liberty to sell to whomever you pleased? A. Yes, sir.

Q. Now, that matter was made clear to you, was it not, at the time when you went to the land office, and at the time when you made your final proof, the matter of the land, the title to the land being in you. That was made clear to you at the time you went to the land office, wasn't it? A. Yes, sir.

Q. And you were perfectly at liberty, as I understand you, to keep the land or sell it, just as you chose?

A. Yes, sir.

Q. As a matter of fact, you did, after you had made your final proof, choose to sell it?

(Testimony of Mrs. Lizzie T. Catlin.)

A. Yes, I had no use for the land, and I sold it.

Q. And was willing to sell it if you could make a profit by so doing?

A. Yes, and it was agreeable to me to do it.

Q. Had you ever made any promise before that you would sell this land to anybody? A. No, not at all.

By Mr. BICKFORD.—I believe that is all.

Redirect Examination.

(By Mr. MAYNARD.)

Q. Mrs. Catlin, it was in less than two hours after you got title to the land and proved up on it that you sold to Mr. Cobban, was it not?

By Mr. WALSH.—We object to that as being leading and not calling for any facts not having been testified to already by the witness.

A. Well, possibly, I don't remember just the time exactly. Of course we had to take time to have the deeds prepared and signed.

Q. How far was this notary's office from the land office?

A. Oh, perhaps between three and four blocks.

Q. How far?

A. Three or four blocks, perhaps five.

Q. Whereabouts was the notary?

A. In the Daly Block.

Q. Has the notary changed his office, or is the notary's office in the same place it was then?

A. No, I think they moved this spring.

(Testimony of Mrs. Lizzie T. Catlin.)

Q. Did it take any length of time to go from the land office to the Daly Block?

A. That is where we went to execute the deed.

Q. Went to execute the deed, got a receipt from the land office? A. Yes, sir.

Q. Your husband went with you, did he?

A. Yes, sir.

Q. You didn't see any deeds prepared, did you, after you got there?

A. Oh, we were there a short time—long enough to have the deeds prepared for our signature.

Q. Did you see anybody prepare the deeds that you signed?

A. Mr. Catlin and Mr. Stoddard was back there at the desk, and I suppose that was what they were doing. They were writing, and they were prepared, and only just had to have our signatures.

Q. But you couldn't say positively what they were doing back there?

A. No, I suppose that is what they were doing. We were there for that purpose.

Q. Now, then, you say, that it was within two hours, after you made your final proofs, or thereabouts that you conveyed to Mr. Cobban?

A. Well, the deeds were made out then and Mr. Catlin took the deed, and then a day or two afterwards he brought me in the money.

Q. You mean it was made out and you signed your name to it then?

(Testimony of Mrs. Lizzie T. Catlin.)

A. Yes, I signed my name; whether the land was disposed of to Mr. Cobban that day or not, I am unable to say. I didn't receive any money that day.

Q. The deeds were there signed on that day, and you didn't do any more after that, did you? A. No.

Q. Except to receive your money? A. That is all.

Q. So, that all that was necessary to be done to sell the land to Mr. Cobban was the signing of your deed in the notary's office. He did all that was required to be done?

By Mr. WALSH.—We object to that for the reason that it is leading and irrelevant and immaterial.

A. Yes, sir.

Q. And you didn't do anything else?

A. No, sir.

Q. Well, if you sold to Mr. Cobban within a few hours after you made your final proof, who first told you, or first spoke to you about doing it? A. About selling?

Q. Yes, you went straight away from the land office and sold to Cobban? A. Yes.

Q. Now, who spoke to you about it?

A. Why, I don't know, really, the land was for sale, and Mr. Cobban choose to buy it, and I was willing to sell to him.

Q. But you had no conversation with Mr. Cobban?

A. Not at all. I never had any conversation with Mr. Cobban on the subject from first to last. I don't know that I saw Mr. Cobban during the whole transaction.

Q. You did not see him?

(Testimony of Mrs. Lizzie T. Catlin.)

A. I have no recollection of seeing him. He was out of town a great deal of the time.

Q. How did you know, then, that Mr. Cobban was willing to buy?

A. I didn't know, I just left it to Mr. Catlin to sell the land whenever he could and wherever he could, and he sold it to Mr. Cobban. I had nothing to do with that part of it. That is, with Mr. Cobban, I had no agreement.

LIZZIE T. CATLIN.

Subscribed and sworn to before me this fourteenth day of March, 1902.

HENRY N. BLAKE,
Examiner in Chancery.

Mrs. EFFIE M. KILBURN, a witness called by the complainant, being first duly sworn by the Examiner, testified as follows:

Direct Examination.

(By Mr. MAYNARD.)

Q. You are the wife of Mr. Kilburn that is here in the room, Mrs. Kilburn, are you? A. Yes, sir.

Q. Mr. E. R. Kilburn? A. Yes, sir.

Q. How long have you been his wife?

A. Fourteen years this fall—thirteen years.

Q. Thirteen years? A. Yes, sir.

Q. Where are you living now, Mrs. Kilburn?

A. In Missoula.

Q. In Missoula? A. Yes, sir.

(Testimony of Mrs. **Effie M. Kilburn.**)

Q. How long have you lived there?

A. It is going on three years, two years last Christmas.

Q. Where did you live just preceding that time?

A. At Ovando.

Q. At Ovando? A. Yes, sir.

Q. And how long did you live up in Ovando?

A. Twelve years.

Q. What? A. Nearly twelve years.

Q. Twelve years? A. Yes, sir.

Q. Do you remember the fact of your taking a claim up under the Stone and Timber Act so-called?

A. I do.

Q. You remember that? A. Yes, sir.

Q. Do you remember where you were living, Mrs. Kilburn?

A. I wasn't living anywhere. I was stopping at Camus Prairie with my father.

Q. You were just stopping there, you were not living?

A. No, we were just stopping.

Q. What was your father's name?

A. George McDonald.

Q. George McDonald? A. Yes, sir.

Q. Where was your husband at this time?

A. He was back and forth from Missoula to Potomac.

Q. When you were stopping at your father's?

A. Yes, sir.

Q. What business was he in?

A. He was in the lumber business.

(Testimony of Mrs. Effie M. Kilburn.)

Q. What?

A. At that time he was in the timber and lumber business.

Q. Who for?

A. For Mr. Cobban, I believe.

Q. Do you know how long during this time, at the time you took up this timber claim, and while your husband was working for Mr. Cobban, he was engaged in Mr. Cobban's service? A. How long?

Q. Yes.

A. Why, somewhere near two years.

Q. Did you know of the fact of your husband locating men and women under the Stone and Timber Act?

A. Yes, sir.

Q. Can you recall some of their names, Mrs. Kilburn?

A. Oh, I know he went up with Mrs. Catlin and Mrs. West. I was with them at the time that they went up there.

Q. Are you able now as you think about it, to think of any more?

A. No, I don't remember of any more.

Q. You don't happen to know the names of the persons who he located?

A. No, I never asked who he went up with.

Q. Do you remember of going up into the mountains to locate your place? A. I do.

Q. And of afterwards going to Missoula to file?

A. Yes, sir.

By Mr. MAYNARD.—I show the witness original

(Testimony of Mrs. Effie M. Kilburn.)

statement in the matter of her entry under the Stone and Timber Act involved in this case.

Q. I ask you if you recognize that signature? (Counsel refers witness to signature upon the papers in connection with said entry.) A. I do.

Q. Whose is that signature, is it yours?

A. Yes, sir,

Q. I read: "Land Office at Missoula, Montana, October 9th, 1899. Mrs. Effie M. Kilburn of Potomac, County of Missoula, State of Montana, desiring to avail myself of the provisions of the act of Congress, etc., for the purchase of the southwest quarter of section 2, township 13 north, range 15 west, in the district of lands subject to sale at Missoula, Montana.

Q. How far, Mrs. Kilburn, was this location from the place where you were living at the time?

A. Three miles.

Q. Who did you go with to see this land?

A. With my husband.

Q. With your husband? A. Yes, sir.

Q. Anybody else? A. No, sir.

Q. Do I understand that your home was within three miles of this place?

A. My father's home was, yes, sir.

Q. You had lived there some time?

A. No, sir, I hadn't lived there. I came down there in July.

Q. You came there in July.

A. Yes, sir.

(Testimony of Mrs. Effie M. Kilburn.)

Q. And this was in October?

A. In October when I filed and in December we moved to Missoula.

Q. I beg your pardon.

A. And in December we moved to Missoula, the 25th.

Q. So that all the acquaintance you had with this section of the country was when you were with your father?

A. Well, I had lived there before, at Potomac; it is seven miles from this timber.

Q. So that two years before that time you had lived seven miles from this timber?

A. That was two years before I was married that I lived seven miles from this timber.

Q. Well, that was a good while ago?

A. Yes, sir, in 1885.

Q. In 1885 you lived for two years within seven miles of this timber? A. Yes, sir.

Q. Then you didn't live near it except during the months of July, September and October of the year in which you filed? A. Yes, sir.

Q. While you were temporarily stopping at your father's? A. Yes, sir.

Q. Had Mrs. West and Mrs. Catlin filed before this time?

A. I don't know, I am sure. When I met them was the day I was going to Ovando on a visit and they stopped over night at the Clearwater, when I did.

Q. Will you be kind enough to state just what you

(Testimony of Mrs. Effie M. Kilburn.)

and your husband did when he took you up to look at this land that you located?

A. Why, we went out and hunted up the corners and run the line across and went all over it.

Q. You and he alone? A. Yes, sir.

Q. You run one end of the line I suppose?

A. Well, we went from one corner to the other all around it and then across it.

Q. And how long did Mr.—how long had your husband been working for Mr. Cobban at this time?

A. About three months, I guess.

Q. About three months? A. Yes, sir.

Q. And how long did he continue in his employ after this time?

A. He didn't work in the timber all the time after that. He was with him when Mr. Dinsmore was partners with him, looking after the orchard homes after that. That was until last July a year ago.

Q. You mean a year ago last July?

A. Will be a year next last July.

Q. And what has he been doing since that time?

A. He has been working for the Largey estate.

Q. For the Largey estate? A. Yes, sir.

Q. The Largey estate that is in Butte?

A. Yes, sir, under Mr. Noon.

Q. Mr. who did you say? A. Mr. Noon.

Q. Mrs. Kilburn, your husband was locating people that summer as he was locating you, was he not?

A. Yes, sir.

(Testimony of Mrs. Effie M. Kilburn.)

Q. And you were gone about how long?

A. Well, what do you mean?

Q. When you went up to look at this land.

A. Well, we were there all day.

Q. That was the only time you were there?

A. Well, that is the only time I went to look at it, I had passed up by it in going to Ovando.

Q. I mean excepting passing by and going back and forth to and from Ovando. That is the only time you ever looked at it?

A. Yes, the only time I went to look at it.

Q. Did you go down afterwards—shortly afterwards, and file?

A. No, sir, I filed before I looked over it.

Q. You filed before you had looked over it?

A. Yes, before I had looked over it thoroughly.

Q. How long before? A. About two weeks.

Q. Did your husband go with you at the time you filed? A. Yes, sir.

Q. You may state as to whether or not you turned the matter over to him to look after for you so far as the work of filing was concerned.

A. Making and filing the papers?

Q. Yes.

A. Yes, sir, he did all the work about the papers.

Q. Did you and he go together to the office when you went down to Missoula to file? A. Yes, sir.

Q. And to Mr. Cobban's office?

(Testimony of Mrs. Effie M. Kilburn.)

A. No, we went to Mr. Hershey and filed—before Mr. Hershey.

Q. Yes, but do you know who made out the papers?

A. Mr. Kilburn made out all the papers, but I don't know where he made them out.

Q. What is that?

A. He made out the papers, but I don't know where he made them out; what place.

Q. The statement that you made here just now, that is in the handwriting of Mr. Kilburn?

A. Yes, sir, that is in the handwriting of Mr. Kilburn.

Q. And where he made it out, you don't know?

A. No, I don't know where he made it out.

Q. Your husband furnished the witnesses, did he not? A. Yes, sir.

Q. And the description of the land?

By Mr. WALSH.—We object to these questions as being a little bit leading.

A. Yes, sir.

Q. When you went to make your final proofs, who went with you, Mrs. Kilburn? A. Mr. Kilburn.

Q. Was—how long have you known Mr. Griswold, Mrs. Kilburn? A. About nine years.

Q. How long? A. About nine years.

Q. Did he have anything to do with locating you?

A. No, sir.

Q. He had no conversation with you on the subject?

(Testimony of Mrs. Effie M. Kilburn.)

By Mr. WALSH.—We object to the question for the reason that it is leading and irrelevant and immaterial.

A. No, sir.

Q. Was he present at any time when you went up to the land?

By Mr. WALSH.—We object to the question for the reason that it is leading and irrelevant and immaterial.

A. Up where, to the land?

Q. Yes.

A. No, sir, he didn't go to the land at all.

Q. Are you able to state how it was that you filed on this land when it was two weeks before you ever saw it or went to look at it to make an examination of it?

A. Why, I didn't think it was necessary to look over the ground until before I made my final proof.

Q. So, who told you that?

A. My husband told me that.

Q. And on this one occasion when you did go to make your final proof, Mr. Kilburn was there with you?

A. Yes, sir.

Q. And nobody else? A. No, sir.

Q. Was Mr. Kilburn working directly for Mr. Cobban or under Mr. Griswold, for Mr. Cobban?

By Mr. WALSH.—We object to that as being irrelevant and immaterial, and further that it is leading.

A. I think he was working directly for Mr. Cobban.

Q. You think he was?

A. Yes, I think he was.

(Testimony of Mrs. Effie M. Kilburn.)

Q. Are you able to state how it happened that Mr. Griswold was a witness for you at the time of your making final proof?

A. Why, he was always in Missoula, and was there I knew, and he knew the land, and had been over it, and I didn't think it was necessary to take anyone else; that is all.

Q. You had no personal knowledge of his having been over it?

A. Yes, I knew he had been all over the timber, up at Sunset, years ago.

Q. But you say you was only up there once, and your husband was along with you. Now, if this is true, how do you know that Mr. Griswold made a personal examination of the land?

A. Why, he had been up there before with others?

Q. Had been up where before?

A. Why, up on this timber, looking up claims for other people.

Q. Do you know that he was doing that?

A. Yes, sir.

Q. Looking up claims for other people?

A. I knew he was looking up claims, and locating people, yes.

Q. Was he doing the same kind of work that your husband was? A. I couldn't say.

Q. Couldn't you say as to that?

A. I knew he was in the timber business, but what he was doing, I didn't know.

(Testimony of Mrs. Effie M. Kilburn.)

Q. You knew he was locating people?

A. Yes, sir.

Q. And your husband was locating people?

A. Yes, sir; if he was sent up there I suppose he did.

Q. You stated that you had nothing to do with the furnishing of witnesses, and I presume you don't know much of anything about it as to how Mr. Griswold came to be your witness.

A. No, not any more than that he had been up over the ground.

Q. Is that all?

A. He was there in Missoula, and my husband said that was all that was necessary. Two witnesses was all that was necessary, so I took my husband and Mr. Griswold.

Q. Who was with you at the time of making the final proof, Mrs. Kilburn, besides your husband and Mr. Griswold? A. That was all.

Q. Where did you get the money from to make the payment? A. I had the money myself.

Q. Where did you get it?

A. I had it in the Western Bank, on deposit there.

Q. In the Western Bank? A. Yes, sir.

Q. The Western Bank of Missoula?

A. Yes, sir.

Q. Did you pay for this by a check?

A. No, I drew the money out of the bank and paid it.

Q. What?

A. I drew the money out of the bank and paid for it.

(Testimony of Mrs. Effie M. Kilburn.)

Q. When did you draw it?

A. On the fifteenth of December.

Q. The date that you made the proof?

A. Yes, sir.

Q. When did you pay it into the bank?

A. On the 26th of September.

Q. The 26th of September? A. Yes, sir.

Q. Was that the date that you filed?

A. No, sir; it was there before I filed.

Q. Where did you get the money from?

A. Property was sold—

By Mr. BICKFORD.—We object to that for the reason that it is irrelevant and immaterial and almost impertinent.

A. Property that we sold.

Q. Property that you sold? A. Yes, sir.

Q. What property was it that you sold?

By Mr. WALSH.—We object to the question for the reason that it is wholly irrelevant and immaterial to the issues made by the pleading in this case.

By the EXAMINER.—Now, you can answer the question.

A. Why, horses and cattle that we had sold.

Q. Whose property was it?

A. It was my husband's, and a third interest was mine.

Q. Your husband had two-thirds interest?

A. Yes, sir.

(Testimony of Mrs. Effie M. Kilburn.)

Q. And you had a third interest in some horses and cattle that were sold?

By Mr. BICKFORD.—That wasn't what the witness testified to, and we object to that for that reason. It is also irrelevant and immaterial.

Q. Is that it?

By Mr. BICKFORD.—We object to that as leading.

By the EXAMINER.—Now, you can answer.

A. I said it was a third interest of what he had sold, that was mine. And he deposited the money in the bank for me.

Q. Do you know what it was that he sold?

A. Yes, sir.

Q. What was it?

A. It was a logging outfit and some horses and cattle.

Q. How many horses?

By Mr. BICKFORD.—We object to that upon the ground that it is irrelevant and immaterial, for any purpose.

A. About sixty head, I suppose; I think there was about that.

Q. Sixty head, you think? A. Yes, sir.

Q. How many cattle?

A. I don't know just how many.

Q. What?

A. I say, I don't know just how many.

Q. Who did your husband sell the sixty head of horses to?

(Testimony of Mrs. Effie M. Kilburn.)

By Mr. BICKFORD.—We object to that as irrelevant and immaterial, and having no bearing upon the issues in this case.

A. He sold them to the Blackfoot Milling Company.

Q. Who did he sell the cattle to?

A. He sold the whole outfit together.

Q. How many cattle there were, you don't know?

A. No.

Q. What was—what did the logging outfit consist of?

A. Oh, there was harness, chains, sleds, cant hooks, etc., and everything in an outfit like that.

Q. That was the cattle and the horses, and the outfit that your husband had used in his business?

A. Yes, sir.

Q. Now, you say that you had owned one-third of this?

A. Well, when he sold it, a third of it was mine.

Q. Oh, under the law of this State?

A. Yes, sir.

Q. And that is the way that you claim that third of it belonged to you, because of the law which gives the wife a third?

A. Yes, sir. When he sold it he deposited that much of it in the bank for me, in my own name.

Q. How much did he sell it for?

By Mr. WALSH.—We object to that as being wholly irrelevant and immaterial, and having no bearing whatever on the issues in this case.

Q. How much did he sell it for?

(Testimony of Mrs. Effie M. Kilburn.)

By Mr. WALSH.—We object to that as being wholly irrelevant and immaterial, and having no bearing whatever on the issues in this case.

A. Somewhere near four thousand dollars.

Q. Four thousand dollars? A. Yes, sir,

Q. How much did he deposit in the bank?

A. Thirteen hundred dollars.

Q. In what shape was it deposited?

By Mr. WALSH.—That is also objected to for the reason that it is irrelevant and immaterial and has nothing whatever to do with the issues raised to the pleadings in this case.

A. I didn't see it; I don't know.

Q. How do you know that it was deposited?

A. Because I got a check that called for it to show that it was there. I got a deposit check.

Q. You mean a certificate of deposit?

A. Yes, sir.

Q. Have you got that now? A. I have.

Q. Where is it? A. It is in my pocket.

Q. Let me see it, please.

By Mr. BICKFORD.—We object to that as being irrelevant and immaterial and having nothing whatever to do with the issues in this case. And I move to strike out the answer of the witness to the question for the reasons given, and I further object to the witness being compelled to show the certificate of deposit in connection with this transaction as it is a personal matter, and

(Testimony of Mrs. Effie M. Kilburn.)

does not relate to the time of making final proof or anything that occurred prior thereto.

And we object for the further reason that counsel is endeavoring to dispute his own witnesses who have heretofore testified that the class of people who made timber and stone entries were irresponsible people and "hoboes," beggars and indigents.

(The witness hands counsel paper referred to by her.) Counsel thereupon reads from the paper so produced as follows: "Western Montana National Bank.")

By Mr. WALSH.—You ought to introduce it in evidence, but she is entitled to have it herself.

By Mr. MAYNARD.—Well, I will read it into the record.

—"J. H. Ryman—

J. H. T. Ryman, cashier, number 3955 The Western National Bank, Missoula, Montana, March 10th, 1902. This is to certify that on the 26th day of September, 1899, this bank issued to E. R. Kilburn, certificate of deposit number 9699 for thirteen hundred dollars, payable to Mrs. E. R. Kilburn, payable to the order of Mrs. E. R. Kilburn. That said certificate was paid by us to Mrs. E. R. Kilburn, December 15th, 1899.

J. H. T. RYMAN,
Cashier."

Q. This paper is dated March 10th, 1902. It seems to have been written and filled out three days ago.

A. That was on Monday.

Q. On Monday of this week?

(Testimony of Mrs. Effie M. Kilburn.)

A. Yes, I went to the bank to get a deposit slip and he said it would be equally as well. I went to the bank to get it and Mr. Ryman made it out and said that it would do equally as well as a deposit check.

Q. Well, he thought he would keep the check?

A. He didn't say that he would, but he thought it would do equally as well as a deposit check to show that I had the money there at the time.

Q. You went to the bank for the purpose of getting the certificate after you were subpoenaed here as a witness? A. Yes, sir.

Q. And the cashier told you he thought this paper that has now been read into the record as part of your testimony would do as well as the certificate of deposit?

A. Yes, he said it would do as well; that he knew why I wanted it.

Q. Now, that was thirteen hundred dollars?

A. Yes, sir.

Q. You saw the money—you drew it out in 1899 in December, did you? A. Yes, sir.

Q. How much of this money did you use for the purpose of paying for this land?

A. I paid the expenses, all of it, for proving up.

Q. How much was that?

A. Something between four hundred and fifty dollars, I think.

Q. Who did you pay the expenses to?

A. I paid the land office four hundred dollars, Mr.

(Testimony of Mrs. Effie M. Kilburn.)

Griswold ten, I think, and twelve for advertising. I don't know just how much more there was.

Q. And you paid the money into the land office?

A. Yes, sir.

Q. And how did you happen to pay Mr. Griswold this ten dollars?

A. Witness' fees? I suppose that is what they charged.

Q. Did you at any time deposit this money, again in the bank? A. No, sir.

Q. What did you do, did you draw this money out of the bank? A. Which money?

Q. This thirteen hundred dollars, did you draw it out? A. Yes, sir.

Q. When did you draw it out?

A. The fifteenth of December.

Q. Of what year? A. 1899.

Q. What did you do with that money?

By Mr. BICKFORD.—We object to that as being irrelevant and immaterial and as going into an inquiry which would be an interminable one.

A. I bought a piece of land with the rest of it; some land in Missoula, some lots.

Q. When did you buy these lots?

A. The same day that I proved up.

Q. Who did you buy them from?

By Mr. BICKFORD.—We object to this for the reason that it is irrelevant and immaterial to the issues in this

(Testimony of Mrs. Effie M. Kilburn.)

case, and is going into an inquiry which would be interminable.

A. Mr. Chatman.

Q. Mr. Chatman, did you say? A. Yes, sir.

Q. What is Mr. Chatman's first name?

A. I couldn't tell you, he is a stranger to me.

Q. Does he live in Missoula, do you know?

By Mr. BICKFORD.—We object to the question upon the ground that it is irrelevant and immaterial and has no bearing upon the issues raised in this case.

A. Yes, sir, I think he does. He hauls wood past our house almost every day.

Q. He is a wood hauler? A. Yes, sir.

Q. Were those lots situated in the Rattlesnake?

A. Yes, sir.

Q. And he owned them at the time?

A. Yes, sir.

Q. And are you able to state how many there were?

A. No, I couldn't state how many there were.

Q. Well, you say that you paid for these lots that you bought of Mr. Chatman—these Rattlesnake lots, on the day that you proved up.

By Mr. BICKFORD.—We object to that as being irrelevant and immaterial and incompetent and calling for an answer from the witness upon a matter that has been gone into already and the witness has answered in the affirmative. A. Yes, sir, I paid for the land.

Q. How much did you pay for it?

(Testimony of Mrs. Effie M. Kilburn.)

By Mr. WALSH.—We object to that upon the ground that it is irrelevant and immaterial to the issues raised in this case.

A. I paid all I had left over the expenses of proving up on the timber claim.

Q. Did you get a deed of the lots?

A. Yes, sir, I did; I got a deed of the lots.

Q. When? A. When I paid for them.

Q. On that day?

A. No, I don't think it was on that day. I don't remember what day it was. I don't hardly think it was that day.

Q. How did you happen to pay the cash for lots and not get them?

By Mr. WALSH.—We object to that as being irrelevant and immaterial, and as making an effort to go into the business matters of the witness, which is not pertinent to this case.

A. As soon as the deeds were made out I got the deeds.

Q. How long were they made out after you paid for them?

By Mr. WALSH.—That is also objected to upon the ground that it is irrelevant and immaterial and as being an effort to investigate the business matters of the witness, and it is not pertinent to the issues in this case.

A. The next day, I think.

Q. The next day?

(Testimony of Mrs. Effie M. Kilburn.)

A. Yes, Mr. Chatman came down to the office and made the papers out.

Q. Came down to what office?

A. To Mr. Cobban's office.

Q. Had you been looking at these lots previous to your purchase, or had your husband done it?

By Mr. BICKFORD.—Well, we should object to that for the reason that it is irrelevant and immaterial and has absolutely no bearing upon any of the matters in issue in this case, and is an effort on the part of counsel to pry into the business affairs of the witness.

A. Well, he looked at them and when he came and told me I went and looked at them.

Q. You hadn't seen this Mr. Chatman?

A No, not then.

Q. Do you own them still? A. Yes, sir.

Q. You recorded the deed, did you?

By Mr. WALSH.—We object to that for the reason that it is leading and irrelevant and immaterial.

A. Yes, sir.

Q. Recorded the deed in Missoula County.

By Mr. WALSH.—We object to that for the reason that it is leading and irrelevant and immaterial.

Q. Now, are you able to state how many lots there are?

By Mr. WALSH.—We object to that for the reason that it is a repetition of the question already asked and answered by the witness.

(Testimony of Mrs. Effie M. Kilburn.)

Q. I ask you the question, are you able to state now, as to how many lots you bought from Mr. Chatman at the time you have now spoken about?

By Mr. WALSH.—We object to that for the reason that the witness has already answered the question two or three times. A. Yes, sir.

Q. You don't know how many lots you bought?

A. No, sir.

Q. Are you able to state positively as to how many pieces of land you bought of Mr. Chatman?

By Mr. WALSH.—We object to that as being irrelevant and immaterial, and an attempt on the part of counsel to cross-examine his own witness.

A. No, sir.

Q. You don't know that either?

A. No, I don't know only that I paid for them, then.

Q. You paid for them, then, did you pay for them at any other time?

A. Yes, after that I paid them what I had on them, and then paid them some afterwards.

Q. Oh, you paid a certain amount on the day that you proved up? A. Yes, sir.

Q. And then you paid more on them afterwards?

A. Yes, sir.

Q. How long after that, was it, that you made the second payment?

By Mr. WALSH.—We object to that for the reason that it is irrelevant and immaterial to the issues in this case.

(Testimony of Mrs. Effie M. Kilburn.)

A. I don't just remember what time it was afterwards. Afterwards, shortly afterwards, not a great while.

Q. Within a week?

A. Oh, it was longer than that.

Q Within two weeks, you think?

By Mr. WALSH.—We object to that upon the ground that it is irrelevant and immaterial, and has no bearing upon the issues in this case.

A. Yes, it must have been three months.

Q. Must have been three months? A. Yes, sir.

Q. That you paid the Wilsons—was it Wilsons?

A. No, Chatmans.

Q. Chatmans, that you made the second payment to Chatman on the lots? A. Yes, sir.

Q. Where were you then?

By Mr. WALSH.—We object to that as irrelevant and immaterial.

A. In Missoula.

Q. Are you able to state as to how you paid Chatman on this second payment?

By Mr. BICKFORD.—We object to that as irrelevant and immaterial and having nothing whatever to do with any of the issues in this case.

A. I paid them in full the second time.

Q. How much was that?

A. Twelve hundred dollars.

Q. That twelve hundred dollars was what you were to pay for the lots?

(Testimony of Mrs. Effie M. Kilburn.)

A. Yes, sir, for all of the lots that was embraced in the first purchase.

By Mr. BICKFORD.—We object to that as being irrelevant and immaterial and having no bearing upon the matters in issue in this case.

A. Yes, sir.

Q. You paid them in full, and that was twelve hundred dollars? A. Yes, sir.

Q. You are able to state now, how much you paid for them? A. Yes, sir.

Q. Now, I will ask you, having refreshed your recollection, how much was embraced in the second payment?

By Mr. WALSH.—That is objected to as being irrelevant and immaterial and having no bearing on the issues in this case.

A. Well, altogether it must have been, well, all over between four hundred and fifty out of the thirteen hundred.

Q. At the first payment you paid them all of the thirteen hundred dollars except that which you paid on this land under the Stone and Timber Act.

By Mr. WALSH.—We object to that as leading and also as being irrelevant and immaterial.

A. I didn't pay it all in full.

Q. No, I know, but what you have already testified to, Mrs. Kilburn, is that after you paid the Chatmans, the first time you paid them all of the thirteen hundred dollars, that you drew out of the bank with the excep-

(Testimony of Mrs. Effie M. Kilburn.)

tion of that which you drew in making payment on this land? A. Yes, sir.

Q. And, then, when you came to make this second payment, and you paid them in full, it was twelve hundred dollars?

By Mr. WALSH.—We object to that for the reason that it is leading, and further it is irrelevant and immaterial.

A. Yes, sir.

Q. That would be the difference between the twelve hundred dollars and the seven or eight hundred dollars that you paid the first time.

By Mr. WALSH.—We object to that for the reason that it is leading and further that it is irrelevant and immaterial.

A. Yes, sir.

Q. Where did you get that money from?

A. From Mr. Kilburn.

Q. What is that?

A. I got it from Mr. Kilburn.

Q. From Mr. Kilburn? A. Yes, sir.

Q. The money that you made the second payment with? A. Yes, sir.

Q. Do you know where he got it?

By Mr. WALSH.—We object to that for the reason that it is irrelevant and immaterial, and is going into matters that can have no possible bearing upon this case.

A. Working for it, I suppose.

(Testimony of Mrs. Effie M. Kilburn.)

Q. You have no other knowledge than that?

A. No, sir.

Q. The money that you completed your payment on the Chatman lots with, whatever it was, four hundred and fifty dollars, or whatever it was, you got from Mr. Kilburn, and you don't know where he got it from?

By Mr. BICKFORD.—We object to that as being leading.

Q. Is that the way you wish it to be understood, Mrs. Kilburn?

A. Well, he got it by working for it, I suppose; he didn't steal it, I know that.

Q. But you don't know from whom he received it?

A. No, sir, I do not.

Q. And he didn't tell you? A. No, sir.

Q. What is that? A. No, sir.

Q. Well, now, Mrs. Kilburn, the same day—the same day that you made your final proofs, and this money was paid into the land office under this Stone and Timber Act, that was the same day you conveyed to Mr. Cobban?

By Mr. WALSH.—We object to that as being leading.

A. No, sir, I did not.

Q. You did not? A. No, sir.

Q. Did you convey to him?

A. Yes, sir, I left my papers in his hands to buy or sell my timber.

(Testimony of Mrs. Effie M. Kilburn.)

Q. Now, Mrs. Kilburn, will you just please tell me just what you mean by that?

A. Just what I say.

Q. Well, what did you do?

By Mr. BICKFORD.—She has stated that already, and we object to that for the reason that the witness has already stated what she had done.

A. I couldn't do any more, could I?

Q. Well, what did you do?

A. Well, I just let my husband attend to that, that was all there was to it, and I didn't go to Mr. Cobban's office after I had proved up. I left the papers there with him to sell. I wasn't living in Missoula at that time.

Q. Well, what do you—what papers did you leave—what papers do you refer to when you say you left the papers there with Mr. Cobban?

A. You asked me what I did with the papers? I didn't carry them around. I left them with Mr. Cobban.

Q. I didn't know that I referred to them?

A. You said what did I do with the papers. I don't know what papers you mean.

Q. Well, you say you left the papers with Mr. Cobban. What papers did you leave with him?

A. The proof papers—the papers that I proved up on, whatever they were.

Q. Are you unable to say whether you did or did not sell to Mr. Cobban?

(Testimony of Mrs. Effie M. Kilburn.)

A. I sold to Mr. Cobban; yes, sir, I did.

Q. When did you sell to Mr. Cobban?

A. Six months after I proved up.

Q. You are sure of that? A. Yes, sir, I am.

Q. Where were you six months after you proved up and got title to your land that you sold to Mr. Cobban?

A. Living in Missoula then.

Q. Where were you when you sold the land to Mr. Cobban? A. In Missoula.

Q. Did you go to his office?

A. No, sir, I did not.

Q. Where were you then?

A. I was living in my own house.

Q. Did he come to your house? A. No, sir.

Q. Where were you when you executed the deed?

A. Down in Missoula. Down at Mr. Dixon's office. That is where I signed my name.

Q. How much money did Mr. Cobban pay you?

A. Between six hundred and seventy-five dollars.

Q. Between what?

A. Between six hundred and seventy-five dollars.

Q. Between six hundred dollars and six hundred and seventy-five dollars? A. Yes, sir.

Q. How did he give it to you?

A. Whenever I called for it. He gave it to me in cash.

Q. He gave it to you whenever you called for it?

A. Yes, sir.

(Testimony of Mrs. Effie M. Kilburn.)

Q. Did you call for it?

A. Whenever I needed it I didn't draw it all out at one time.

Q. You didn't draw it all out at one time?

A. No, sir.

Q. How long was it before you did draw it all out?

A. Four or five months.

Q. Four or five months after that?

A. Yes, sir.

Q. And it was five or six months after you got your land that you sold your land to Mr. Cobban?

A. Yes, sir.

Q. Do you know how much you received?

A. I drew two hundred dollars at one time and used that all up; until I used it up.

Q. What?

A. I drew two hundred dollars at one time and three hundred dollars at another time and used that up—drew it as I needed it.

Q. From whom did you receive the first payment of two hundred dollars? A. Mr. Cobban.

Q. How long a time was that—was that after you sold to him?

A. Yes, sir, six months after.

Q. That must have been spent after you proved up?

A. Not quite a year, it would have been a year in December. We proved up on the 15th of December and the next June I drew two hundred dollars.

Q. How did he pay it to you?

(Testimony of Mrs. Effie M. Kilburn.)

By Mr. BICKFORD.—She has answered that question already and we object to that as repetition.

A. He didn't pay it to me. I bought some lots of another fellow's, Mr. Greene and I went down to the office and asked Mr. Cobban to pay this man two hundred dollars for the lots, and he paid this man two hundred dollars. We went down to the office together.

Q. Do you own this land now? A. I do.

Q. Where are they, these lots that you bought?

A. Adjoining the others on the side of them.

Q. Do you know what Mr. Greene's name was?

A. His name is Greene Frazier—Frazier is his second name.

Q. How many lots did you get from him?

A. Two.

Q. And how much did you pay him?

A. I paid him two hundred dollars.

Q. At a hundred dollars a lot.

By Mr. WALSH.—We object to that upon the ground that it is irrelevant and immaterial to the issues in this case.

A. Yes, sir.

Q. That was two hundred dollars that you got from Mr. Cobban in June?

By Mr. WALSH.—We object to that as being irrelevant and immaterial.

A. Yes, sir.

Q. When did you get your next money?

(Testimony of Mrs. Effie M. Kilburn.)

A. Well, I drew seventy-five dollars or so after that, and there was some more lots on the side of us that I wanted to buy and I drew out three hundred dollars to pay for them.

Q. About the town lots now, was this after you got $200 to pay Greene Frazier, that you got $25.00 afterwards from Mr. Cobban?

By Mr. WALSH.—Objected to as being irrelevant and immaterial.

A. Yes, sir.

Q. Did you go there in person?

By Mr. WALSH.—Objected to as being irrelevant and immaterial and leading.

A. Yes, sir.

Q. To Mr. Cobban's office?

By Mr. WALSH.—We object to that for the reason that it is leading and irrelevant and immaterial.

A. Yes, sir.

Q. Who paid you? A. Mr. Cobban.

Q. You had no order from anybody?

By Mr. WALSH.—We object to that as being leading and as irrelevant and immaterial.

A. No, sir.

Q. He paid you twenty-five dollars in cash?

By Mr. BICKFORD.—We object to that as leading.

A. No, he gave me a check for $25.

Q. Now that is two hundred and twenty-five dollars?

A. Yes, sir.

(Testimony of Mrs. Effie M. Kilburn.)

Q. Now, when was the next time?

By Mr. WALSH.—We object to that for the reason that it is irrelevant and immaterial.

A. I don't just remember the date. About three months I think after that.

Q. Well, that must have been last October then.

By Mr. BICKFORD.—We object to that upon the ground that it is leading.

A. That was in September, I believe. I can tell that because I have the papers to show for it.

Q. What is that?

A. For lots that we bought.

Q. Who did you buy those lots from?

By Mr. WALSH.—We object to that also for the reason that it is irrelevant and immaterial.

A. From a man by the name of Woodward.

Q. What is that?

A. From a man by the name of Woodward.

Q. Is this some more lots in Rattlesnake Addition?

By Mr. BICKFORD.—We object to that as being leading.

A. Yes, sir.

Q. Then those are in addition to those that you bought in September?

A. Yes, sir, they were adjoining us on the north side.

Q. How many? A. Four.

Q. And how much money did you pay them for these?

(Testimony of Mrs. Effie M. Kilburn.)

By Mr. WALSH.—We object to that for the reason that it is irrelevant and immaterial.

A. Three hundred dollars.

Q. Three hundred dollars for four lots. They seem to be running down. They don't seem to be holding up to a hundred dollars apiece.

A. One man was cheap—one was cheap and the other one was broke, that is how we came to get them.

Q. How was that? A. One was broke.

Q. And did you take this man to Mr. Cobban's office?

A. No, sir, I did not.

Q. You got the money from Mr. Cobban?

By Mr. BICKFORD.—We object to that also as being irrelevant and immaterial and having no bearing whatever upon the matters in issue in this case.

A. It came from Mr. Cobban. I didn't go down after it myself. My husband got it.

Q. Your husband got it? A. Yes, sir.

Q. And he got it from Mr. Cobban?

By Mr. BICKFORD.—Objected to as being irrelevant and immaterial and leading.

A. Yes, sir.

Q. Did he get the two hundred dollars from Mr. Cobban?

By Mr. BICKFORD.—We object to that also as leading.

A. No, sir, he did not.

Q. Did he get the $25.00 from Mr. Cobban?

(Testimony of Mrs. Effie M. Kilburn.)

A. No, sir.

Q. You got the two hundred dollars to make the first payment yourself?

By Mr. BICKFORD.—We object to that as being irrelevant and immaterial as well as leading.

A. Yes, sir.

Q. And the $25.00 you got yourself?

By Mr. WALSH.—We object to that for the same reason, as it is leading and irrelevant and immaterial.

A. Yes, sir.

Q. And now you may state whether or not after having made these two first payments yourself from money you got from Mr. Cobban you ever received any more money from him in person?

A. Yes, I went to him several times afterwards and got money whenever I needed it.

Q. Now, then, the third time, your husband got this money you say? A. Yes, sir.

Q. After this, the fourth time, what is the next time that you remember of getting money from Mr. Cobban?

By Mr. WALSH.—We object to that for the same reason, as it is leading and irrelevant and immaterial.

A. Oh, I don't remember just when I went down. I don't remember the date.

Q. Well, then, you couldn't say the time this was, and this last time you say was in September.

By Mr. BICKFORD.—We object to the statement of counsel.

(Testimony of Mrs. Effie M. Kilburn.)

Q. You have accounted for two hundred dollars, twenty-five dollars, three hundred dollars that your husband got. Now, when was the next one?

A. I don't remember. I got money out afterwards, just as I needed it until I got it all. I didn't keep any account of it.

Q. You didn't keep any account of it?

A. No, sir.

Q. Not when you drew it out?

A. No, sir, I did not.

Q. If you kept no account of it, you haven't got any account now? A. No, sir.

Q. And you never kept any account?

A. No, sir.

Q. And you now, as I understand it, have no present recollection as to any other amount that you got from Mr. Cobban other than the three you have already testified to?

By Mr. BICKFORD.—We object to this because the witness has already testified that she received various amounts of money from Mr. Cobban until she had received the full six hundred dollars.

Q. Is that so or not? A. Yes, sir.

Q. Then that is so? A. Yes, sir, it is so.

Q. Cannot remember any time when you drew any sum of money at all except the three?

A. No, sir.

Q. And you kept no account of any kind?

(Testimony of Mrs. Effie M. Kilburn.)

A. No, I didn't keep any account. I didn't think it was necessary or I would.

Q. Now, Mrs. Kilburn if you swear that it was six months after you made final proof in this case, and paid your money into the land office before you conveyed to Mr. Cobban, how do you account for the fact that the deed itself showed that you sold to him the same day that you proved up?

A. I left the papers with him. I never received any money for six months afterwards.

Q. Is that the best answer that you can make to that question, Mrs. Kilburn?

By Mr. WALSH.—Well, that is a good answer.

A. Yes, sir.

Q. You sold on the same day, didn't you? And haven't you known all the time that you did sell on that date?

A. I didn't receive any money on that date. I don't see how I could sell it if I didn't receive any money.

Q. Then you signed the deed and did all that you could to sell it and delivered the deed over without receiving any money? A. I did, I left it with him.

Q. Left it with who? A. With Mr. Cobban.

Q. Well, then, when you say that you didn't sell the land when the deed says that you did, on the same day, you mean by that you didn't receive any money for six months afterwards?

A. No, sir, I didn't receive any money for six months afterwards.

(Testimony of Mrs. Effie M. Kilburn.)

Q. But you left the papers, and the deed signed, the very day that you proved up? A. Yes, sir.

Q. And the money that you received was as you have stated? A. Yes, sir.

Cross-examination.

(By Mr. BICKFORD.)

Q. Were you over 21 years of age when you made this entry of the timber and stone land? A. I was.

Q. Had you ever made a timber and stone entry prior to that time? A. No, sir.

Q. Was the land which you entered under the timber and stone laws more valuable for the timber upon it than it was for any other purpose, Mrs. Kilburn?

A. Yes, sir.

Q. Had you gone upon the land for the purpose of ascertaining whether it was so valuable or not?

A. Yes, sir.

Q. And knew at the time you made your entry that it was more valuable for timber and stone than it was for agricultural purposes? A. Yes, sir.

Q. Had you ever been, before that time, had you ever made a timber and stone entry? A. No, sir.

Q. Well, now at the time when you made this entry you state that this land is not more valuable for agricultural purposes than for the timber there is upon it. What do you say about it now?

A. I say the same now.

Q. You were asked if the land contained any indica-

(Testimony of Mrs. Effie M. Kilburn.)

tions of deposits of gold, silver, cinnabar, copper, or coal, and you stated "No." Is that true now?

A. Yes, sir.

Q. And was true at the time you made that statement? A. Yes, sir.

Q. You say also that you don't apply to purchase the land on speculation. Is that true?

A. That is true, yes, sir.

Q. And you say that you do not apply to purchase the land above described on speculation, but in good faith to appropriate it to my own exclusive use and benefit, and that I have not directly or indirectly made any agreement or contract or in any way or manner, with any person or persons whomsoever, by which the title I may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except myself. A. Yes, sir.

Q. Now, was that true at that time?

A. Yes, sir.

Q. Now, at the time when you went onto this land, I understand you were living not far from the land itself? A. Yes, sir.

Q. In living in that Blackfoot country as many years as you have, you knew something about this land, prior to making this entry, didn't you?

A. I didn't know about this one piece.

Q. But you knew about the timber land generally in that country, didn't you?

A. I did generally, yes, sir.

(Testimony of Mrs. Effie M. Kilburn.)

Q. How long has your husband been engaged in the lumber business?

A. I guess seventeen years. He has been up on the Blackfoot.

Q. And in passing back and forth between the different places, on your way home to Ovando, you had seen this land? A. Yes, sir.

Q. Whereabouts is it? A. Near Sunset.

Q. On the Sunset road? A. Yes, sir.

Q. Which side is it?

A. It is on the lefthand side going out.

Q. It lays on the side of the Blackfoot river?

A. Yes, sir.

Q. How far from the Blackfoot river?

A. About two miles.

Q. Then it is on the south side of the Blackfoot river, isn't it?

A. I couldn't tell you the directions. It is on the lefthand side of the Sunset road.

Q. You intend to say that you are not employed by Mr. Griswold to enter this land? A. No, sir.

Q. You were not employed by Albert Jemison, were you? A. No, sir.

Q. Were you employed by anybody? A. No, sir.

Q. You said, I believe, that you had known Griswold for sometime? A. Yes, sir.

Q. About how long?

A. Well, I think it is nine years since I first met him. I hadn't known much of him.

(Testimony of Mrs. Effie M. Kilburn.)

Q. Where did he live during that time?

A. Well, when I first got acquainted with him he came from Wisconsin. From Chippewa Falls.

Q. He has lived on the Blackfoot during the last few years, hasn't he? A. Yes, sir.

Q. Do you know the reputation of Mr. Griswold in the community in which he has lived?

A. I don't think it is very good.

Q. Well, do you know it?

A. Yes, sir, I think I do.

Q. Is it good or bad? A. Bad.

Q. In a matter in which he was personally interested would you believe him under oath?

A. No, sir, I would not.

Q. When you went to Missoula to the land office as I understand you, you went there prepared to pay for the land with your own money? A. Yes, sir.

Q. Did you ask anybody to loan you the money with which to buy this land? A. No, sir, I did not.

Q. In making your final proofs before the land office, you were asked this question: "Have you sold or transferred your claim to this land since making your sworn statement, or have you directly or indirectly made any agreement or contract, in any way or manner, with any person whomsoever, by which the title you may acquire from the Government of the United States may inure, in whole or in part, to the benefit of any person except yourself." A. Yes, sir.

Q. To which question you answered, "No, sir." Was that correct? A. Yes, sir.

(Testimony of Mrs. Effie M. Kilburn.)

Q. You were also asked this question: "Do you make this entry in good faith for the appropriation of the land exclusively to your own use, and not to the use or benefit of any other person?" Your answer is, "Yes, for my own use." A. Yes, sir.

Q. That answer was true, was it not?

A. Yes, sir.

Q. You were also asked this question at that time: "Has any other person than yourself, or has any firm, corporation, or association any interest in the entry you are now making, or in the land, or in the timber thereon?" To which you answerd, "No, sir." Was that true?

A. Yes, sir, it was true.

Q. As I understand you then, when you had made your final proof, was the first time that you had ever had any talk with anybody concerning the sale of this land.

A. I don't know as I talked with anyone about selling it.

Q. But after the time that you had made your final proof, you concluded that perhaps you would sell it later on? A. Yes, sir.

Q. You had not fixed in your own mind the price at which you would be willing to sell?

A. No, sir, I had not.

Q. Well, then, at that time you hadn't concluded definitely that you would sell the land?

A. No, sir.

Q. At the time of making the final proof, I mean.

(Testimony of Mrs. Effie M. Kilburn.)

A. No, sir.

Q. It appears from the papers here on file or certified copies of the papers—the deed, that you executed a deed on the same day that you made final proof?

A. Yes, sir.

Q. Now, when you executed that deed, did you sell the land at that time, or did you just leave it to be sold.

A. I didn't make any bargain to sell it at all that day. There was nothing else said about selling it. Whenever I—

Q. You just left the papers there?

A. Yes, in case it could be sold.

Q. Then as I understand it, at that time there was no agreement between you that you would sell it to Mr. Cobban, but you simply left the paper with Mr. Cobban so that he could sell it if he got a satisfactory price for it? A. Yes, sir.

Q. That is the way it was?

A. Yes, sir.

Q. Was there any bargain when the deed was executed by you by which you were to sell the land?

A. No, sir.

Q. So the land wasn't sold at that time, but was sold afterwards? A. Yes, sir.

Q. And you got your money afterwards?

A. Afterwards, yes, sir.

Q. This money that you had deposited in the Western Montana National Bank was your own money was it?

(Testimony of Mrs. Effie M. Kilburn.)

A. Yes, sir.

Q. And was at your disposal, I believe, at all times after its deposit until you finally drew it out?

A. Yes, sir.

Q. In other words, the certificate of deposit was obtained by your husband and was made payable to your order? A. Yes, sir.

EFFIE M. KILBURN.

Subscribed and sworn to before me this 14th day of March, 1902.

HENRY N. BLAKE,
Examiner in Chancery.

At this point an adjournment was taken until ten o'clock A. M., Friday, March 14th, 1902.

Friday, March 14, 1902, 10 A. M.

ROBERT FISHER, a witness on behalf of the complainant, being first duly sworn testified as follows.

Direct Examination.

(By Mr. MAYNARD.)

Q. Mr. Fisher, what is your full name?

A. Robert Fisher.

Q. Where do you live?

A. In Missoula, Montana.

Q. How long have you lived there?

A. I have lived there since April, 1891.

Q. How long have you lived in Montana?

A. Montana has been by home since June, 1866.

(Testimony of Robert Fisher.)

Q. What is your age?

A. Seventy-four years, past.

Q. Did you hold any official position under President Harrison? A. Yes, sir.

Q. What position was that?

A. Register of the United States land office at Missoula.

Q. How long a time were you such officer?

A. About three years and four months, such a matter.

Q. Did you personally discharge the duties of that office for that length of time? A. Yes, sir.

Q. Do you know R. M. Cobban?

A. Yes, sir, I know him.

Q. And Major Catlin?

A. Yes, sir; Major Catlin was receiver in the land office with me at the time of my service.

Q. He was the receiver? A. Yes, sir.

Q. And you the register? A. Yes, sir.

Q. Do you know Mr. Pound? A. Yes, sir.

Q. And Mr. Hershey? A. Yes, sir.

Q. Mr. Lynn D. Catlin?

A. Yes, sir, I know him.

Q. Mr. Pope?

A. Pope Catlin, yes, sir, I know him too.

Q. Were you in Missoula during the spring, summer and fall of 1899?

A. Yes, sir, I arrived in from the south; spending the winter of '89 in New Mexico, and I arrived in Missoula

(Testimony of Robert Fisher.)

about the 19th or 20th of April, '99, and I have been there steady ever since.

Q. What has your principal business been, Judge, since you retired from the land office?

A. Well, I have been practicing in the land office as an attorney.

Q. Did you business make it necessary for you to make frequent visits to the land office during this year?

A. Yes, sir.

Q. That I have called your attention to, '99?

A. Yes, sir; nearly every day. I very seldom missed a day during that summer—once and sometimes oftener.

Q. You may state as to whether or not you knew of your own knowledge of these entries being made under the Stone and Timber Act—of entries being made under the Stone and Timber Act?

A. I knew of entries being made and occasionally one I made myself for clients when called upon.

Q. Did you see yourself these entrymen and entrywomen in the land office?

A. Yes, I saw a number that summer, most of them strangers to me.

Q. I wish you would state in your own way, Judge Fisher—just—not from your personal knowledge, but from the common rumor throughout the town in Missoula and among your circle of business acquaintance, just the circumstances and the conditions and the arrangements that existed at the time which led these men and women to make these claims under the Stone and Timber Act?

(Testimony of Robert Fisher.)

Mr. WALSH.—We object to that as immaterial, irrelevant and incompetent; rumor, hearsay and common report of that sort, not being material to this inquiry, and furnishes no basis for rendering any judgment against anybody.

Q. Go on and state it your own way. This is a chancery case, you know.

Mr. WALSH.—Objected to as immaterial, irrelevant and incompetent, rumor, hearsay, common report and that sort of thing not being material to this inquiry, and furnishes no basis for rendering any judgment against anybody.

A. Well, my attention was called to these frequent entries by various people on numerous occasions, and questions were frequently asked who these people were making timber and stone entries for themselves or in the interest of anybody, and it was currently reported that the cause of the stampede of entries at that time was in favor of Mr. Cobban; that they were made for the purpose of, when title was perfected to sell to Mr. Cobban; these were the reports I knew nothing of it personally.

Mr. WALSH.—We now move to strike out this answer of the witness, because it is as the witness states, mere hearsay of which he has no knowledge himself whatever.

Q. I wish you would state in your own way as to what you saw while in the land office about the connection that Cobban and his employees had with these entrymen and entrywomen?

(Testimony of Robert Fisher.)

A. Well, sir; I saw these people accompanied by men from Cobban's office—Cobban had an office in the old Higgins Bank and for a while also prior to that time he had an office next to the Western National Bank, and that is where I saw these people come from, from the Western National Bank, and they would be accompanied by some one from the office as a rule; and people have called my attention to it knowing that I was a land attorney and asked me numerous questions on the subject which of course I was unable to answer, and frequently they would volunteer and ask questions, are these entries to be made in the interest of Mr. Cobban; I told them I did not know.

Q. You may state as to whether or not during these months while this stampede of entries as you say was being made, you yourself had a knowledge as to the circumstances, what they were doing it for, who they were to sell to, and what they were to get, not from any personal conversations with Cobban, but as gathered from many different sources?

Mr. WALSH.—We object to that as immaterial, irrelevant and incompetent, rumor, hearsay, common report and that sort of thing not being material to this inquiry, and furnishing no basis for rendering any judgment against anybody.

A. I had no conversations with Mr. Cobban on the subject.

Q. I know you did not, I mean not from him but from various different sources.

(Testimony of Robert Fisher.)

Mr. WALSH.—The question is whether you had any knowledge, of your own knowledge?

A. No, sir; I had none of my own knowledge; it is purely on rumor. It was currently reported and admitted by a great many that appeared to know about the facts.

Mr. WALSH.—We move to strike out the answer because it is apparent that it is hearsay.

Q. Just what was it that was admitted by many that appeared to know the facts, what was the admission?

A. Why, they would make jeering remarks with winks and nods and say, "There goes some of Cobban's men or women to make timber entries."

Mr. WALSH.—We move to strike out this answer of the witness because it is hearsay.

(Answer continued.) And it was so well understood that I have a desk in a real estate office in which numerous people come in there for to borrow money for to make payment on timber entries, and Mr. Brooks, who is the money man of the concern, said he had no money to loan on timber lands because he knew nothing about it and universally referred them to Mr. Cobban; I thought nothing about it at the time until subsequent events transpired.

Mr. WALSH.—We move to strike out the answer of the witness because it is hearsay.

Q. When these people proved up and were to sell to Cobban, what do you understand they were to receive?

Mr. WALSH.—I do not believe that this sort of thing

(Testimony of Robert Fisher.)

has any business in this record at all. I do not believe counsel will be able to stand up before the Court when he goes up there and pretend this thing is proper, and I do not think he is going to assert it is—to go into this proposition and say what was rumored around and that kind of thing.

Mr. MAYNARD.—It is perfectly evident that it is competent for an expert who was living there at the time and who saw these things himself, who saw these entrymen and entrywomen, to state the facts which existed at the time, that was generally known in the community from the jeers and remarks that were made and the circumstances and conditions under which these entries were made.

Mr. WALSH.—The man has not pretended to give anything at all that he knows about. He is simply telling what was commonly reported in the neighborhood, what he heard about this thing, and we do not care to go into the subject at all, because we do not want to be compelled to introduce a whole lot of witnesses from the city of Missoula who will testify that it was not generally known, and that they had not heard about this thing if it had been generally known, and if it had been generally known they would have known about it; it introduces a thing here that we have no business to go into, we do not care to incumber the record.

Mr. MAYNARD.—In answer to that I have no doubt whatever that counsel can produce a thousand men and women who would be able to swear that they did not

(Testimony of Robert Fisher.)

know anything about the matter, but what I say is that this is no answer whatever to the positive proof of a man who does know, and that our proposition is to show that Judge Fisher who had been the register himself of the land office and who was in fact at the time an attorney practicing every day in that land office, himself saw these people, and that in connection with what he saw and knew he had these conversations with these other people.

Q. When these people proved up and were to sell to Cobban what do you understand they were to receive?

Mr. WALSH.—We object to the question and ask the Examiner to say to the witness that he need not answer.

The EXAMINER.—The attorney representing the complainant having stated the legal grounds that he takes, the Examiner will require the witness to answer the question.

A. You want the question answered?

Q. Yes, sir.

A. Well, sir; the general impression was and the general talk was that they were to receive $100 over and above the expenses at the time of making the proof and paying for the land.

Mr. WALSH.—We move to strike out the answer of the witness now upon the ground that the same is manifestly hearsay and the witness says it is; the witness does not pretend to know anything about the matter from his own personal knowledge, nor from any talk had with Mr. Cobban about the matter, and he expressly states that he never did talk with Mr. Cobban.

(Testimony of Robert Fisher.)

Q. You may state as to whether or not you had this understanding at the time you were in the land office during this season you have referred to?

Mr. WALSH.—We object to this as leading, calling for hearsay and a conclusion of the witness, namely his understanding from some thing or another.

A. Well, I had that understanding on the outside more than in the land office.

Q. I mean when you were practicing?

A. Yes; at that time we used to understand, but I would state one thing that I frequently asked persons who made these remarks, now do you know anybody who has made this agreement for to take one hundred dollars, and I universally got the reply "I do not." My purpose in asking that question was simply if such an agreement was made, knowing the law as well as I thought I did, was to report the matter to the Commissioner of the General Land Office over my own signature.

Q. And the persons who informed you said they did not know definitely of a specific case?

A. No; they did not. None of them would identify a single case, because it was my intention if such was transpiring to make a personal report of the matter, but I wanted some assurance, some affidavits to that effect before I would report to the Commissioner.

Q. Who did you learn and understand Cobban was working for?

Mr. WALSH.—We object to that as leading, as hear-

(Testimony of Robert Fisher.)

say and as calling for the understanding of the witness and not any fact that he is able to speak of.

A. Well, I understand that he was buying this land in the interest of Senator Clark.

The defendant waived the cross-examination of the witness.

It is stipulated that the Examiner can certify to the testimony of Robert Fisher, that the same has been correctly transcribed and have like effect as if read, corrected and subscribed by him.

HENRY N. BLAKE,
Examiner.

I do hereby certify that the foregoing testimony of the witness, Robert Fisher, has been correctly transcribed.

HENRY N. BLAKE,
Examiner.

M. P. DUNHAM, a witness on behalf of complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. MAYNARD.)

Q. Your name is Matthew P. Dunham?

A. Yes, sir.

Q. Please give me your age, occupation and present residence?

A. Well, my present residence is at Ovando, Powell county, Montana; my occupation is a guide, and my age

(Testimony of M. P. Dunham.)

will be 50 years old the 27th day of next October; I am 49 years at the present time.

Q. You may state whether or not some time in the year 1899 you took up a claim under what is known as the Stone and Timber Act? A. I believe I did.

Q. Where were you living at the time?

A. I was stopping on the Clearwater.

Q. Whereabouts?

A. Well it was between 4 and 5 miles from the mouth above Mr. Blanchard's ranch; in fact, on the upper end of the ranch.

Q. Just what do you mean by the use of the word "stopping"?

A. Because I do not have any home; I may be living here and next winter I may be living in Missoula; I am a rover, as you might call it, I have no permanent home.

Q. Are you a married man?

A. No, sir.

Q. And your home is wherever you happen to be?

A. Yes, sir, wherever I happen to stay.

Q. Do you own any real or personal property?

A. I own personal property but no real estate.

Q. No real property? A. No, sir.

Q. What personal property do you own?

A. Horses, saddles and guns.

Q. How many horses?

A. I believe I have five head at the present time.

Q. And how many cattle? A. Not any.

(Testimony of M. P. Dunham.)

Q. Did you own as much personal property in 1899 as you own now or more?

A. I owned more.

Q. How much more?

A. Well, I believed I only owned one head of horses more, I sold one last fall that I had at that time—yes, I had two head; I had two head stolen since then, so it was three more that I had at that time.

Q. Would you be willing to state who is was that first suggested your taking up this claim?

A. There was nobody ever suggested it to me; I have known since I was a child I could take a claim when I saw fit, and as I knew this land for several years I went and took one when I got ready.

Q. How far was this land from where you were stopping?

A. Well, I should judge about 4 miles on a straight line and about 6 miles by the trail. If I could have went straight on the section line it would have been between 4 and 5.

Q. Who went with you at the time you made the location?

A. Who went to look at the land with me?

Q. Yes, sir. A. There was nobody.

Q. There was nobody?

A. No, I had been over the land probably fifty times when I had been out on hunting trips; I have been across the land I should say hundreds of times before but I will say fifty; I know every inch of ground in that

(Testimony of M. P. Dunham.)

part of the country; there is not a section or a quarter I have not been on.

Q. Well, are you a surveyor?

A. No, sir, I am a hunter or a guide; my occupation is guiding people about the country, over the country, anywhere they want to go.

Q. Well, if there was a forest in a steep, rugged mountain-side of many miles in extent, are you able to go out there with your knowledge and pick out definitely the lines which would describe 160 acres of land?

A. I would if it was surveyed, pick it out by the surveyor marks; they would mark it out so anybody could tell it.

Q. So anybody could?

A. I do not say as anybody could if they did not understand anything about surveying; they could not know anything about their marks, but the corner trees of the section are always marked, so you will know it, if they are not trees they are stones.

Q. What else would you have to know?

A. I don't think you would have to know anything only the signs they put on them.

Q. What signs?

A. Why the section signs and the range.

Q. These things a man would have to know in order to make any kind of an exact location, would he not?

A. Certainly he would, unless he had someone with him that knew, but I think there are very few Americans that do not know that.

(Testimony of M. P. Dunham.)

Q. And if it was unsurveyed land you would have no data at all?

A. Certainly not, you would have nothing to go by.

Q. Now, you say you went alone to this location?

A. Yes, sir.

Q. How did you happen to go alone to that location?

A. Because I wanted to look it over again before I located; I had been through it a good many times alone, that piece, and I wanted to be sure it was worth taking, so I went to look it over.

Q. You knew at the time that it had not been taken?

A. No, I did not know, because I had to call on the land office agent to find out if it had been taken when I went to locate, he showed me a plat, showed me it was not taken.

Q. What agent was that?

A. The agent in Missoula; I do not remember his name.

Q. At the land office? A. Yes, sir.

Q. Was that when you went to locate?

A. Yes, sir.

Q. At the time you went to the land office for the purpose of making your location, you did not know until you got to the land office and made an investigation there and inquiry of the register as to whether it had been taken or not?

A. No, sir, I did not know anything about it.

Q. Couldn't you have found that out from the Government map? A. No, sir.

(Testimony of M. P. Dunham.)

Q. Why?

A. Because all the maps are not marked, suppose it had been taken the day before or two days before, how would the maps have anything to do with it, the only way you can find out anything positively like that is to find out from the agent, he marked it as soon as it is located. If a man came in two hours after I located he would have it marked so as they would have known it.

Q. So the Government maps do not give the information?

A. Certainly, they cannot give that information when the survey was first taken the whole thing is open, two weeks after that it might be all taken up, the map don't show it.

Mr. BICKFORD.—You mean until the entry is made, Mr. Dunham?

A. Yes, until the entry is made.

Q. Well, now, tell us just exactly when you went out there alone to this location, what you did?

A. When I went out to look at the land, you mean?

Q. When you went out to look at this location, what did you do?

A. I went over the land, estimated the amount of timber on it, that was all, I believe, and the character of the ground.

Q. Had you ever had any dealings in the sale of pine lands?

A. Well, I do not know that I could say I had any

(Testimony of M. P. Dunham.)

dealings. I have done quite a lot of estimating, but I don't remember any sales being made upon it.

Q. Who did you estimate for?

A. Well, I estimate for William J. Marshall on the Clearwater a quarter section that he owned and he sold it afterwards to the Bonner Milling Company.

Q. Well, go on, what is the next one?

A. Well, that is about the only one in Montana. I used to help an estimator in Minnesota.

Q. How long ago was that?

A. '70 and '72—up to '72.

Q. How much did you estimate the value of this pine at that was growing upon this location that you selected?

A. Well, a man cannot estimate the value of it; he can estimate only the number of thousand feet there is on it; they may give one dollar and they may give two dollars and they may give a dollar and a quarter.

Q. How many thousand feet did you estimate there was on it?

A. About eight hundred thousand.

Q. Did you make any estimate as to its value?

A. No, sir.

Q. Did not?

A. No, sir, because I did not know what timber was worth; timber that stands close to the river is worth a good deal more than what stands back two or three miles from it.

Q. How far was this from the river?

(Testimony of M. P. Dunham.)

A. By the section lines, I believe, it is two miles and a half; the road that would go to it would be about three.

Q. So you had no knowledge or idea as to the value of the pine on your location? A. No, sir.

Q. How long after that before you went to the Missoula land office?

A. I think it was about 36 hours.

Q. Thirty-six hours?

A. Something like that.

Q. Who had you seen between the time that you went all alone to this location and going to Missoula?

A. Great Scott, I seen probably forty or fifty people.

Q. Anybody with reference to this location?

A. No, sir.

Q. You talked to somebody about it, didn't you?

A. No, sir, not anything in particular about the location. I told some I was going to take such a section if it was vacant, or such a quarter.

Q. Who did you tell that to?

A. I told it to Ben Bryan for one, and a fellow living at the mouth of the Clearwater. I will think of his name directly—he kept a saloon; Johnnie Gillis was another, and his partner was another, Steve Tepper and Oscar Muckenhirn—that is as near as I can speak his name, a Swede or a Norwegian.

Q. You told it to these men?

A. Yes, because Muckenhirn has a claim right close

(Testimony of M. P. Dunham.)

to this—adjoins it, I believe. I would not be positive I spoke to Oscar Muckenhirn.

Q. You would not?

A. I know his claim is right to the side of it. I was talking with him the same day I was up looking at it; he has a homestead just under the foot of it, my claim was up on the side of the mountain, his was right down the flat.

Q. You met these men within thirty-six hours after you made the location and on your way to Missoula?

A. Yes, sir, the evening before I started for Missoula.

Q. Did they have any knowledge at that time of what you intended to do?

A. I think not, because I know there is lots of them that didn't know anything until after I proved up.

Q. Did Mr. Griswold know anything about it?

A. No, sir, Mr. Griswold didn't know anything about it, didn't know it, I guess until two months after I proved up; I never had any dealings with Mr. Griswold of any kind.

Q. Did you ever have any dealings with Mr. Jameson?

A. No, sir, just know him by sight, that is all.

Q. Albert Jameson?

A. I know him by sight.

Q. Had you had any talk with Jackways & Faust?

A. No, sir.

Q. Do you know who they are?

A. Yes, sir, they are merchants in the town I live

(Testimony of M. P. Dunham.)

in, I should know them, I have known them for the last five or six years.

Q. You had no conversation with them?

A. No, sir, didn't know they had anything to do with timber, didn't know it until 5 or 6 months after, 3 or 4 months anyhow.

Q. Well, you knew, Mr. Dunham, if you took 160 acres of Government land, that you would have to pay two dollars and a half an acres for it, didn't you?

A. Yes, sir.

Q. I understood you to say in your testimony a little while ago you had no money to buy land with?

Mr. WALSH.—We object to that because the witness has not so testified, and as leading.

A. I do not remember of my testifying that I did not have any money.

Q. I asked you if you had any personal property and you said you had none, except—

A. Is money called personal property?

Q. I so understand it; yes, sir.

A. Well, then, I did not understand it that way, what I should call personal property is stock, and buildings and such as that.

Q. Did you have the cash at the time?

A. I did not have enough, no, sir.

Q. How much cash did you have at the time you started to go to Missoula to make your filing?

(Testimony of M. P. Dunham.)

Mr. WALSH.—Objected to as irrelevant and immaterial and as leading.

A. I had, I should judge, about twenty-five dollars at that time.

Q. You had about twenty-five dollars?

A. Yes, sir, at the time I went to make my entry.

Q. How far was your home, or at least the place you were stopping from Missoula?

A. It was about 38 miles, I should think.

Q. Thirty-eight miles?

A. Something like that, I am not positive as to the distance.

Q. Now, it would take four hundred dollars to pay for your land?

A. I was stating what I had when I went to make the entry, I was not stating what I had when I went to prove up.

Q. You went to make your entry, make your filing and the idea of filing carries with it that of paying for the land when the time comes to prove up?

Mr. WALSH.—Objected to as leading.

A. Yes, sir.

Q. Where were you going to get your money?

A. I was going to borrow it, as I have done lots of times when I am short.

Q. You had frequently occasion to borrow money when you were short?

A. Yes, sir, do it very often. I borrowed the money to come in here on.

(Testimony of M. P. Dunham.)

Q. Well, sir, when you went to Missoula, what did you do?

A. Well, I don't know as I understand your question, what you mean by the question I understand the question all right, but I do not understand your meaning.

Q. When you went to Missoula, Montana, for the purpose of filing on your location, what did you do?

A. Well, in the first place, I went to a lawyer—I don't know that he is a lawyer, but then he has a right to make out papers or descriptions of the land, and got him to make out the description; then I took it to the land office to file on it.

Q. What was that man's name?

A. Mr. Catlin, I believe.

Q. Mr. John B. Catlin?

A. I do not remember his initials.

Q. Had he done business for you before?

A. No, never that I know of.

Q. Had you seen him before?

A. No, sir, that is the first time I had ever seen him to know him. I might have seen him in Missoula a good many times probably had met him, but did not know him.

Q. Has he ever done any business for you since, except in connection with this entry?

A. No, that is all the business we had.

Q. You may state now how it happened that you went to this stranger, Mr. Catlin?

A. Well, I went to that stranger just the same as

(Testimony of M. P. Dunham.)

I would to any other. I do not know any of the business men of Missoula in his class of work.

Q. From who did you get the information that this man who was then a stranger could do this work?

A. Well, sir, that would be an impossibility to answer because I asked question of different business men to find out who I could get; one of the business men, though, I can cite you to is Mr. Richards, in the Richards and Stevens' Grocery store in Missoula.

Q. Well, what about him?

A. Only I asked him who I could get.

Q. Mr. Richards in Stevens' grocery store?

A. Yes, sir.

Q. What did he say?

A. He gave me the names of several different ones that could make it out for me; he stated Mr. Catlin was making out papers right along and would probably be the best man for me to go to.

Q. Well, now, go on and state, please, what you did then?

A. When I got my papers I went to the land office and made the entry.

Q. Wait a minute. What did you do after you got this information? A. I went to Mr. Catlin's.

Q. You went to Mr. Catlin?

A. Yes, sir, to have my papers made out.

Q. You introduced yourself to him? Told him what you wanted?

(Testimony of M. P. Dunham.)

A. Yes, sir, told him what I wanted, of course, gave him a description of the land.

Mr. MAYNARD.—I show the witness the sworn statement that he refers to, and ask you if that is your signature?

A. I believe that is my signature, I have no reason to doubt it.

Q. And the writing which fills up the blanks in this printed sworn statement is in the handwriting of Major Catlin?

A. I believe so; I could not swear to his writing.

Q. But you say he filled it out?

A. If that is the original, I think he did.

Q. Well, this is the original.

A. He was the man.

Q. (Mr. MAYNARD—Reads:) Land office at Missoula, Montana, August 16th, 1899. I, Mathew P. Dunham, of Clearwater, County of Deer Lodge, Montana, desiring to avail myself of the provisions of the acts of Congress, etc., for the purchase of lots 1, 2, 3, of section 4, township 15, range 15 west in the District of ———, land subject to sale at Missoula, Montana.

Mr. WALSH.—We move to strike this out as no testimony in the case.

Q. Now, then, you may state after Mr. Catlin filled this sworn statement out for you did you go with him or did he go with you to the land office?

A. Yes, sir, if I can remember right he did, but it is

(Testimony of M. P. Dunham.)

quite a while ago, and I cannot remember all the things that happened.

Q. Had you ever had any business in the United States Land Office before?

A. No, sir, that was my first experience.

Q. And you never have had any experience since?

A. No, sir, none since, any more when the time came to prove up.

Q. I mean in connection with this business?

A. Yes, sir.

Q. Well, what did you and Mr. Catlin do when you went to the land office, at this time?

A. Well, I don't think Mr. Catlin done anything. I asked if the land that I wanted had been located; the agent took down the map and looked and said it was not. I might have the whole township if I wanted it, that section was vacant, and I took them three lots. I didn't know if it was lots at the time, neither did the agent. We found it out afterwards and had to correct the entry; it was taken as a quarter section, and the next day they hunted me up and told me they had made a mistake, and it would have to be put down as lots, as it was fractional.

Q. Did you finish your work there that day in the land office?

A. No, sir, not the day I made the entry; I finished the work at that time, supposed to have done so, but they came after me the next day to rectify the mistake that had been made.

(Testimony of M. P. Dunham.)

Q. You were in Missoula?

A. Yes, sir, I would have been out in twenty minutes if they had not found me; I was on the road then.

Q. Then after you corrected the description as you have stated did you return again to Missoula until the time for filing? A. Yes, sir.

Q. You did?

A. I was in Missoula—I won't be sure that I was in Missoula after until the time of filing. I don't think I was; I think that was the only time I was there.

Q. Are you able to state now what you did during those sixty days?

A. When was that entry made, then I can tell whether I was there or not?

Mr. WALSH.—August 16th.

A. Yes, sir, I was there in September, about the 20th.

Q. 20th of September? A. Yes, sir.

Q. For what purpose? A. On my way home.

Q. Where had you been?

A I had been up the Bitterroot valley over on the Idaho, Clearwater.

Q. How long had you been there?

A. I had been out 25 days on a hunting trip; it took me three or four days to go up the Bitterroot and three or four days to come back close to five weeks I was gone.

Q. Close to five weeks?

A. Something like five weeks.

Q. Were you guiding a party?

(Testimony of M. P. Dunham.)

A. Yes, sir; Count Haecke of the German Embassy in Washington; he was secretary of the German Embassy.

Q. You were gone with him five weeks?

A. Twenty-five days I was out with him; that is, I was twenty-five days from the time I left Hamilton until I got back to Hamilton.

Q. Then where else were you during this time?

A. I was nowhere until I got back to Missoula, just going up the Bitterroot and back.

Q. What time did you say you got back to Missoula?

A. I don't know exactly what time I got back to Missoula.

Q. Was that the time you proved up?

A. No, sir; I proved up on the 28th of October.

Q. What were you doing between the time you returned to Missoula and the time you proved up?

A. I stayed two days in Missoula—

(Answer continued:) and came up the Clearwater, from the Clearwater I came up on the Montour, up to Ovando, Ovando has been my home ever since.

Q. What did you do in Missoula during the two days?

A. That would be impossible to say—just loafing around there taking in the sights; nothing to do.

Q. Can you remember anything that you did of any kind between the time that you went with Mr. Catlin to file on this location and the day following when they corrected the description up to the time that you made your final proofs?

(Testimony of M. P. Dunham.)

A. Can I remember anything I done in connection with this business?

Q. Yes.

A. I didn't do anything in connection with that; that was all done until the final proof came.

Q. How much did you pay Mr. Catlin for his services?

A. I could not tell you; can't remember anything about that; don't know as I paid him anything; I would not make any statement about that.

Q. Have you any recollection of paying him anything? A. No, sir; none whatever.

Q. Well, now, the day comes for your making final proofs, you were at Missoula then?

A. I went into Missoula from Ovando at that time. I got there the night before the proofs, proving up.

Q. Who did you go with?

A. I went alone—that is, I went on horseback; I rode with a stage-driver a short ways; he asked me to ride with him, but as far as personal friends went, I went alone; I was a stranger to the driver.

Q. As I understand you when you went to Mr. Catlin to have him fill out, when he made out the sworn statement, you gave him a description?

A. Yes, sir, I gave him a description.

Q. You took it from the Government map?

A. I took it from my own observation of the ground; I did not take any Government map for it; I did not have any Government map.

Q. And you made up the entire description from your

(Testimony of M. P. Dunham.)

own unaided personal inspection of this land on that one time when you went there?

A. One time, I told you two or three times I had been over it probably fifty times.

Q. In hunting? A. Yes, sir.

Q. You went out for this one particular purpose—to make this location?

A. Yes, sir, to see if I look straight when I was hunting over it, because I never passed through timber without noticing it.

Q. You were able to tell by a personal inspection of the maps as to the subdivisions, the section, township and the range?

A. I can tell the range and the section.

Q. Could you tell the subdivisions?

A. The quarter section?

Q. Yes.

A. The quarter stones will always tell you that and the corner tree.

Q. Such information as you had was gathered entirely from your observation at that time?

A. Yes, sir.

Q. And you made out a description and took that to the land office?

A. Yes, sir, if I had looked a little closer I should probably have found out that it was a fractional section instead of a full section.

Q. When did you find that out?

A. After they corrected me in the land office, because

(Testimony of M. P. Dunham.)

undoubtedly the corner stone, the corner tree showed it was a fractional section, but I did not pay any attention to it; all I saw was the sections and the quarters.

Q. What did you do on the day that you proved up?

A. That would be a pretty hard question to answer, tell all I done on that day.

Q. Why?

A. I cannot remember all I done on a day two years ago; one thing I done I went up and proved up on the land; that I can remember all right.

Q. You had some witnesses?

A. Yes, sir, had two of them.

Q. Who were they?

A. Mr. Thomas Bryan was one and Mr. F. B. Arey was the other.

Q. When did you tell him about being a witness?

A. I think I told him that I had named him as a witness when I came back up the Bitterroot. I did not ask him if he would be a witness. I also had two other names for witnesses I told on my trip back from the Clearwater—Oscar Muckenhirn was one and Steve Tepper was the other that had been sent, named in the paper. I don't know as they were named; they both told me it was all right; I did not use either one of them; saw these two men in Missoula and saved the trip of the other two men from the Clearwater down to Missoula.

Q. Who did you say the two men were?

A. Oscar Muckenhirn, Steve Tepper, Thomas Bryan

(Testimony of M. P. Dunham.)

and F. B. Arey was the four men that I named, and I choose Bryan and Arey for proving up witnesses; all four of them was well acquainted with the land and had been through it.

Q. They were not with you at the time you went up?

A. No, Bryan lived upon, close to the land; Muckenhirn by the side of it, and Tepper had been over the ground; Arey was the least acquainted with it of any of them; he had been over it to my certain knowledge.

Q. Up to the range of mountains up there?

A. Yes, sir.

Q. Are you able to state that they had any other knowledge except just as people who lived up there as to the general character of the land up in that country?

A. I don't think they had any knowledge of it than that it was timber land; they had been over it and knew that it was not farming land; no one would need to go over it to see that; it is right on the side of a mountain.

Q. Well, then, the day you proved up, you got your money that day, didn't you?

A. I cannot say whether I got it that day or the next; I won't be positive; it may have been that evening.

Q. You mean between the two days?

A. No, I would not—

Q. You say there was a correction made the next day?

A. Well, that was the entry; the correction was made the day after the entry.

Q. At the time of the entry?

(Testimony of M. P. Dunham.)

A. Yes, sir, the next day was when the correction was made.

Q. Now, then, calling your attention subsequently to the time when you made your final proofs, what do you say as to whether you got it in the morning or in the evening?

A. I made the final proofs sometime in the afternoon I believe, between one and two o'clock.

Q. Well, now, I ask you when you got your money on that day? A. Well, what money do you mean?

Q. The pay for the land?

A. I got it about three o'clock I believe, as near as I can judge, I got it about three o'clock in the afternoon.

Q. You gave your testimony and proved up by one?

A. Between one and two. I did not have the money in my pocket when I proved up, went back and borrowed the money and paid for it.

Q. Who did you go to to borrow the money?

A. The same man that I always went to when I was short of money when I was in Missoula.

Q. Who was that?

A. Mr. Cobban, I borrow money of him several times.

Q. You had known Mr. Cobban for some time then?

A. Well, I had known him well enough so that I always borrow money of him if I wanted it.

Q. How many times have you borrow money from Mr. Cobban before this time?

A. Well, sir, I could not state.

(Testimony of M. P. Dunham.)

Q. How much money did you borrow from him this time?

A. I borrow about three hundred, and I think it was seventy or eighty dollars.

Q. Three hundred and seventy or eighty dollars?

A. I don't remember just what it was, and a few cents.

Q. This money you say was borrowed that day was paid into the land office to pay for your land?

A. Yes, sir.

Q. Who was with you at the time the money was paid in?

A. There was no one with me, I was alone. There was people in the land office but I do not know who they were.

Q. Did you pay it in yourself?

A. Yes, sir, I did pay it in myself. I went to Mr. Cobban and got the money and then went back to the office and paid for it.

Q. Did he give it to you in currency?

A. Yes, sir, in cash, that is what I wanted as I understood the land office would not take a check.

Q. Do you know how much money it took to pay for the land? A. Yes, sir.

Q. How much was it?

A. I said three hundred and seventy-odd dollars, if I remember right, it was less than four hundred.

Q. How did it happen to be less than four hundred?

(Testimony of M. P. Dunham.)

A. Because it was a fractional section, lots 1, 2, 3; it was not a 160 acres, 140-odd acres if I remember right.

Q. And then on that same day after you had proved up and after you got this three hundred and seventy-odd dollars from Mr. Cobban, then you convey the land to him on that same day?

Mr. WALSH.—We object to this as leading.

A. Well, I told you I did not remember what day it was that I conveyed the land to him; whether it was that evening or the next morning I cannot remember that.

Q. But it was either that same evening or the morning of the next day that you did not sell to him?

Mr. WALSH.—We object to that as leading.

A. Yes, sir.

Q. Whereabouts were you when you sold to him?

A. I believe I was in his office.

Q. Anybody with you?

A. Well, there was men in the office; there was no one present with me.

Q. How much did he then pay you?

A. Paid me four hundred and seventy-odd dollars is what I received for it.

Q. That is what you receipted for?

A. That is what I received.

Q. Four hundred and seventy-odd dollars?

A. Yes, and whatever odd cents it is I don't know.

Q. That is, he credited you with the money that he

(Testimony of M. P. Dunham.)

paid into the land office and you got one hundred dollars besides?

Mr. WALSH.—We object to this as leading.

A. I do not know whether you can give it that way or not. I paid him for what I owed him and he paid me for the land.

Q. You got one hundred dollars net?

Mr. WALSH.—We object to that as leading.

A. Yes, sir, and more, too.

Q. How much more?

A. I cannot tell you, if I could tell you the exact figures I could tell you how much I got for it and what the price of the land was too.

Q. Well, it was a hundred dollars, more or less?

Mr. WALSH.—We object to that as leading.

A. Yes, sir.

Mr. MAYNARD.—I read from the official paper the testimony given at the time of the final proof on the 27th day of October and the receiver's receipt dated October 27th, in which Mr. Ranft, the receiver, certified that he received from Mathew P. Dunham the sum of three hundred and sixty dollars and seventeen cents, being in full for the quarter of section number four in township 15 north of range 15 west containing one hundred and forty-four and seven one-hundredths acres at $2.50 per acre.

And on the same day from the certified copy of the deed which has been offered in evidence I read: "This

(Testimony of M. P. Dunham.)

indenture made the 27th day of October between Mathew P. Dunham, an unmarried man, of Clearwater, Deer Lodge County, etc., party of the first part, and R. M. Cobban of Missoula, Missoula County, Montana, party of the second part, in consideration of the sum of eight hundred dollars, lawful money of the United States to him in hand paid does convey the hereinafter described real estate situate in the county of Missoula, State of Montana, to wit: Lots 1, 2, and 3 of section 4, township 15 north of range 15 west." This acknowledged before Wallace P. Smith on the 27th day of October, 1899.

Mr. WALSH.—We move that that be stricken out on the grounds that it is no testimony given by the witness.

Mr. MAYNARD.—And the witnesses to the testimony at the time were Thomas Bryan and Frank B. Arey.

Mr. WALSH.—We move that that be stricken out on the ground that it is no testimony given by the witness.

Cross-examination.

(By Mr. BICKFORD.)

Counsel for the defendant now correctly reads the official receipts of the United States Land Office at Missoula, Montana:

"Timber and Stone Declaratory Statement No. 293—

No. 1156. R.

Receiver's Office at Missoula, Montana,

October 27th, 1899.

Received from Mathew P. Dunham, of Deer Lodge

(Testimony of M. P. Dunham.)

County, Montana, the sum of three hundred and sixty dollars and seventeen cents, being in full for lots 1, 2 and 3 quarter of section No. 4 in township No. 15 west, north of range No. 15 west, containing one hundred and forty-four acres and seven one-hundredths at 2.50 per acre. (In figures) $360.17.

(Signed) WILLIAM Q. RANFT, Receiver.

$1.50 Testimony fee received. Number of written words, 667. Rate per hundred words, 22 1/2 cents. Also register and receiver's fee of ten dollars."

Q. Mr. Dunham, you are a citizen of the United States?

A. Yes, never have been outside of the limit.

Q. Notwithstanding you are a wanderer?

A. Yes, sir, I am a wanderer, but I have not been out of the limits yet.

Q. I will ask you whether or not at the time of your making this timber and stone entry you were over the age of twenty-one years?

A. Yes, sir, I think I was.

Q. You had never made a timber and stone entry before that time? A. No, sir.

Q. You were then qualified under the timber and stone laws of the United States to make a timber and stone entry? A. Yes, sir.

Q. Now, at the time when you made this entry in the United States land office at Missoula you were called upon to make a written statement, and among other

(Testimony of M. P. Dunham.)

things the sworn statement contains the following: "That the land contains no mining or other improvements, nor, as I verily believe, any valuable deposits of gold, silver, cinnabar, copper or coal." That was true, was it? A. Yes sir.

Q. You further stated: "That I have made no further application under said act; that I do not apply to purchase the land above described on speculation, but in good faith to appropriate to my own exclusive use and benefit, and that I have not, directly or indirectly, made any agreement or contract, or in any way or manner, with any person or persons whomsoever, by which the title I may acquire, from the government of the United States may inure in whole or in part to the benefit of any person except myself." That was true, was it?

A. Yes, sir.

Q. Now, why did you select Thomas B. Bryan and Frank B. Arey as your witnesses?

A. Well, they were both personally acquainted with the ground, so also were the other two witnesses both personally acquainted with it.

Q. You were yourself personally acquainted with the ground, were you? A. Yes, sir.

Q. Was this ground more valuable for timber and stone than for agricultural purposes?

A. Yes, sir, because it was absolutely worthless for agricultural purposes.

Q. Now, at the time when you made your final proof you were asked this question: "Have you sold or trans-

(Testimony of M. P. Dunham.)

ferred your claim to this land since making your sworn statement, or have you directly or indirectly made any agreement or contract in any way or manner, with any person whomsoever, by which the title you may acquire from the government of the United States may inure, in whole or in part, to the benefit of any person except yourself?" To which you answered "No, sir." Was that answer true? A. Yes, sir.

Q. You were asked this question: "Do you make this entry in good faith for the appropriation of the land exclusively to your own use and not for the use and benefit or use of any other person?" You answered "Yes, sir." Was that true? A. Yes, sir.

Q. You were asked this question: "Has any other person than yourself, or has any firm, corporation, or association any interest in the entry you are now making, or in the land, or in the timber thereon?" You answered "No, sir." Was that true? A. Yes, sir.

Q. Then at the time you made your final proof upon the claim you had made no bargain or agreement with any person to sell it to anybody?

A. No, sir, not a word.

Q. You were the absolute owner of this land after you made your final proof? A. Yes, sir.

Q. Now, why did you sell the land?

A. Because it was out of the question for me to do anything with it, because I am not worth enough to put a logging crew in and log it.

(Testimony of M. P. Dunham.)

Q. You had no wish to put in a logging crew and log it yourself?

A. I had no means to do that if I had wished.

Q. This country in the Blackfoot is a hilly, mountainous, timbered country, is it? A. Yes, sir.

Q. Will you please tell the Court whether or not there is any agricultural land there at all?

A. Yes, there is agriculturtal land in the vicinity.

Q. Where about would the agricultural lands be, and where would the timbered lands be?

A. They are all together—that is, they are run all together, there is a valley maybe that is three or four hundred yards wide that you can raise anything in the shape of small grain on; then up on the side of a mountain running up three or four thousand feet are the lands with timber on the lowlands—that is, those lying alongside of the stream would be valuable for agricultural purposes; the timber lands would be up on the side of the mountain and would be valuable for the timber contained on it; then some of the valley has not got anything but rocks on it, from the old glacial period when it dropped rocks, chunks off from it, to parts of the valley—you cannot do anything with that; there may be a good ranch right by it, and then the next section below it there would be a ranch you could not do anything with. It is that way on the Lost Prairie Creek.

Q. Did you ever make inquiries whether you could

(Testimony of M. P. Dunham.)

sell this land to any better advantage than you did sell it?

A. Yes, sir, I asked at the logging camp on the Clearwater what would be the show to sell it to the Bonner Milling Company.

Q. What reply did you receive from them, what knowledge did you obtain?

A. It would be all right if they had timber around it, so as to have a block of timber there, if they had timber in the camp.

Q. Did they have any in that vicinity that you know of?

A. They had timber on the other side, on the Placid Lake side, they did not have any on this side.

Q. What is the nearest water to this land of yours?

A. The Clearwater river.

Q. How far is that?

A. Two miles and a half as near as we could figure it on the map—that is, by section lines.

Q. Then Mr. Griswold did not hire you to go into this land and take it up for him?

A. No, sir, I had no earthly talk with Mr. Griswold, about any land in any shape.

Q. As a matter of fact, you did not know Albert Jameson?

A. I know him by sight, but I am not personally acquainted with him.

Q. Did you have any talk with him at all?

A. No, sir, not in regard to land.

(Testimony of M. P. Dunham.)

Q. As a matter of fact, did you have any talk with anybody about taking up this land prior to your taking it?

A. I told people I was going to take up a claim but not in a stated place.

Q. You had not at that time selected a piece of land then? A. No, sir.

Q. Did you ever make up your mind to take a piece of land, a particular piece, until after you examined this piece which you ultimately took?

A. Yes, I had my eye on two or three different pieces of land, but one or two of them I found had been taken before I got to them.

Q. Then this piece of land was the one you finally selected after mature deliberation? A. Yes, sir.

Redirect Examination.

(By Mr. MAYNARD.)

Q. Mr. Dunham, all of your witnesses that you had in the case had taken up claims under the Stone and Timber Act?

A. Well, they had not at that time; I believe they have since, and I would not say but that they had at that time, I was not posted on what they had done.

Q. You had been well acquainted with Thomas Bryan, hadn't you?

A. I had been acquainted with Bryan for about five years or a little over; Mr. Arey the same way.

Q. Did you know Thomas Bryan had taken up a claim?

(Testimony of M. P. Dunham.)

A. Did not at that time, but I know since that he had and had already proved up, I believe, at that time.

Q. When you talked with him about the fact that you were going to take up a claim and wanted him as a witness, didn't he tell you about the fact that he had taken up one?

A. No, sir, not that I remember; he might have told me but I do not remember. I don't think he did; I think I would have remembered it if he had.

Q. None of these four witnesses that have taken up claims told you anything about it?

A. I knew two of them had taken up claims.

Q. How did you know that?

A. I saw their names. I saw in the paper that Muckenhirn—I believe, I know he had taken up a claim. Now, when I think of it he had taken up a timber and stone claim in section two.

Q. You knew it at the time?

A. Yes, the day I named him, just near the section I took my own in.

Q. You had had conversations with him, hadn't you?

A. I had talked with him lots of times; I am well acquainted with the man.

Q. About this matter?

A. I don't know as I ever talked anything particular about the land question with him. In the first place, he was so deaf there is no pleasure in talking with him to make any lengthy conversation that you don't have to.

(Testimony of M. P. Dunham.)

Q. Did you know any other people besides the four witnesses that you named that have taken up claims?

A. Did I know of other people?

Q. Yes.

A. Yes, I knew of hundreds of them that had taken up claims.

Q. Under this Stone and Timber Act?

A. Yes, and under the homestead laws.

Q. I mean under the Stone and Timber Act during this spring, fall and summer of 1899?

A. No, I was not personally acquainted with but very few that had taken any.

Q. Do I understand that you had or had not talked with these people in regard to the matter previous to your making the location?

A. Well, I had told some I was going to take up a claim when I found one that suited me, but I can't remember who it was or how many.

Q. Some of them told you they had taken it up?

Mr. WALSH.—We object to that as hearsay.

A. I do not remember that, I cannot tell you; I could not say.

Q. When you were stopping up there around the Blackfoot country near the Clearwater during the time you were there, during the season, what have you to say as to whether or not you had heard of what the people were doing there relative to taking up these claims, and that they were disposing of them after

(Testimony of M. P. Dunham.)

they had filed and getting one hundred dollars and expenses?

Mr. WALSH.—We object to that as irrelevant, immaterial and incompetent; as hearsay and leading.

A. Well, sir, I cannot remember so long as that; I cannot remember what I heard. I know people were talking about claims, but at the time I was there I was bear trapping and a man doing that kind of work don't get around very much with people where he can hear everything, and as soon as I was through hunting there then I went up the Bitterroot valley.

Q. Are you prepared to swear, Mr. Dunham, to this Court, that previous to the time of your making this location, you did not know from what you had heard in that part of the country that people were taking up claims under the Stone and Timber Act?

A. No, I cannot swear I do not know.

Q. And that they were doing it for the purpose of selling again and realizing one hundred dollars or thereabouts and their expenses?

A. No, sir, I could not swear that I did not know it, nor could I swear that I did know it, either one; it is too long ago to remember everything that happened then.

Q. So, I understand you, now, to have it recorded here as your sworn testimony that you did not know at the time or had not heard at the time that such was going on?

A. No, I say I am not prepared to swear I did not

(Testimony of M. P. Dunham.)

know, nor that I did know, either one. I could not say I had been told it. I cannot say I had not been; I am not positive on that as I cannot remember that far back; a man would have to have a pretty good memory to remember everything he heard two years ago or a year and a half.

Q. You swear that you heard nothing of the kind?

A. I do not swear to that effect at all; I say I cannot remember.

Q. You swear you have no memory on the subject?

A. Yes, sir, that I swear to I have no memory on the subject.

Q. Nor any recollection? A. Yes, sir.

Q. Wasn't that the purpose from what you had heard Mr. Dunham of your making this location?

Mr. WALSH.—Objected to as leading.

A. Well, sir, I have heard ever since I have been in Montana that a man could take up a claim and sell his claim whenever he got ready afterwards to some logging company; there is a Chippewa Falls Logging Company operating in there and the Bonner Milling Company operating in there and have been for years, you could sell out at any time you wished if you had good timber; that is known by everybody in that section of the country.

Q. Didn't you know of the fact that there was something of a rush, in the nature of a rush or stampede, as some of the witnesses called it for taking up claims that spring and summer?

(Testimony of M. P. Dunham.)

A. I believe I did hear something to the effect that everybody was taking up claims, but I did not know what the rush was any more than if I had any thoughts at all; I thought that the timber would be all taken up before I could enter it myself. I know that is what started me. I thought if I did not take a claim pretty soon I would not get any in there.

Q. And your chance of getting one hundred dollars would be gone?

Mr. WALSH.—We move to strike that out as an assumption on the part of counsel, that a fact has been proven that has not been proved, and as a manifestly unfair way of cross-examining the witness, even assuming that the Government has any right to cross-examine this witness, his statement is not justified by anything that the witness has stated; and as leading.

A. I never thought anything about that, it was the timber I was after.

Q. You just swore a little while ago you had no use for the timber, you could do nothing with it?

A. Yes, sir.

Q. How do you account for your last answer in connection with that answer?

A. If I did not have the timber I could not sell it.

Q. Then the only purpose you wanted the timber for was to sell it again?

A. If I did not use it for my own purposes I could sell the timber if I could do it, sell it standing there. One would be selling the timber, would they not, if a

(Testimony of M. P. Dunham.)

man cuts logs and hauls them into the river and sells them, it is sold.

Q. When did you find out what the value of this timber was, Mr. Dunham?

A. Well, that is hard to say when I found it out; probably sometime during the time between the time of entering and proving up; cannot state when it was.

Q. Who did you find it out from?

A. That is another question that cannot be answered. I talked with a good many different ones. I talked with the foremen of the logging camps in the Clearwater; they stated would be according to how near it would be to the water what the value would be.

Q. How much did you find out was the value?

A. Well, sir, I did not find out what the value would be; they would not go and look at the land, and the road that would have to be made, the road to get it out; they could not tell what the timber would be worth.

Q. So you never did find out anything about it?

A. Never did find out exactly what it would be worth.

Q. Did you find out anything about it?

A. I know this winter I found a section sold right on the side of the land with 1,900,000 feet for one dollar and a quarter a thousand; that was sold this winter.

Mr. WALSH.—We move to strike this out as not responsive to any question.

Q. That was this winter? A. Yes, sir.

(Testimony of M. P. Dunham.)

Q. That is the first knowledge or any information you had on the subject?

A. Yes, sir; that is the first authentic knowledge I had on what they were paying for timber.

Q. Authentic knowledge, did you have any knowledge of any kind?

A. It ain't knowledge if you don't know it.

Q. Did you have any information of any kind at the time you proved up? A. No, sir, I did not.

Q. Now, then, when you gave your sworn testimony at the time of your proving up, this question was asked you: "What is the estimated market value of the timber standing upon this land"? your answer was, "About $700"?

A. Yes, sir; if the man that proved up was here, if the agent that I proved up before was here, he could probably tell you that I made the remark that I did not know what the timber was worth, but there was between seven and eight hundred thousand feet on the land; that was the remark I made and whatever the timber was worth.

Q. What agent do you mean?

A. The land agent.

Q. When he asked you that question?

A. That was the answer I made him—that there was between seven and eight hundred thousand feet of lumber on it, and whatever timber was worth that would be what the timber was worth.

Q. So he filled in the answer, you did not?

(Testimony of M. P. Dunham.)

A. Yes, sir, probably from some suggestion that he made, I made him put it at $700; that was the remark I made him.

Q. That is your explanation for giving the answer of $700 when you have sworn you did not know anything about it?

A. Yes, that is the only explanation, and that not letting me know anything about it.

Recross-examination.

(By Mr. BICKFORD.)

Q. When you said $700 was the value of the timber standing upon that land, that was your estimate, wasn't it?

A. That was the estimate of the amount of the timber standing upon the land between seven and eight hundred thousand.

Q. You estimated that would be about what it would be worth?

A. I suppose that would be an estimate.

Q. Now, you had known for a number of years of people making timber and stone entries in the Blackfoot river?

A. Stone and timber claimants; I cannot say I had known any until that summer, but homesteads I had known several, a good many. I was personally acquainted with many that lived on their homesteads there.

(Testimony of M. P. Dunham.)

Q. Didn't Mr. Marshall take up a timber and stone claim prior to this summer?

A. No, he took a homestead.

Q. I understood you to say it was a timber and stone claim he took up?

A. No, he sold his timber on his claim; it was a homestead claim that he had proved up on three or four years ago, he sold the claim this winter.

Redirect Examination.

(By Mr. MAYNARD.)

Q. Were you indicted for perjury in making this entry?

A. I believe I was, but I did not see anything of the officer.

Q. You have been out in the woods, haven't you?

A. I have, and was in the woods at the time. I am in the woods during the summer most of the time; it is just a scratch if any one can find me in town in the summer time. I believe, though, if I remember right, my name was on the list of those indicted, but I have seen the marshal two or three times since and he never said anything to me about it; did not show me any warrants.

Q. If he has not arrested you that is his business?

A. I suppose; I was not dodging him in the least.

Q. When did you come to town?

A. I came yesterday; got here on the 2 o'clock train—I believe it is two o'clock.

Q. Did you come right here to the office?

A. Yes, sir; right straight to the office.

(Testimony of M. P. Dunham.)

Q. How much time did you spend with Cobban yesterday afternoon?

A. Yesterday afternoon—I don't think I seen Cobban yesterday afternoon, only right here in the office.

Q. Did you see him after supper?

A. I did not see him until just bed-time; anyhow, about 11 o'clock last night.

Q. Saw him at 11 o'clock last night?

A. I think so.

Q. Whereabouts? A. At the hotel.

Q. What hotel?

A. That I stop at—the Warren House, I believe, is the name of it.

Q. Just tell me how Mr. Cobban happened to see you at that time at 11 o'clock at night?

A. Well, because he came into the hotel where I was.

Q. Whereabouts? A. In the office.

Q. Hadn't gone to bed?

A. No, sir; I went to bed in a few minutes.

Q. How long a conversation did you have with him?

A. I could not say that—probably talked with him for fifteen or twenty minutes. Mr. Opsata and I was both talking.

Q. The other witness and you both talked, Cobban was talking to you?

A. Part of the time—not all the time.

Q. Was there anything said about the circumstances which called you here to Helena?

A. I believe it was mentioned, yes.

(Testimony of M. P. Dunham.)

Q. About your testimony? A. No, sir.

Q. Nothing said about it?

A. Not in particular about the testimony. I think he asked me if I had been arrested, indicted when the rest of them were arrested, and I had not been, there had been no warrant served upon me.

Q. Was the conversation in regard to the subject matter of your testimony? A. No, sir.

Q. Nothing said by him to you about it?

A. Not about what I should testify to.

Q. Nothing about the subject matter of it?

A. Well, I told you we were talking about the case, mostly about Mr. Griswold, the man that had caused the trouble.

Q. Nothing said about the loan?

A. What loan?

Q. His loan to you?

A. No, certainly not. I had been borrowing money off him several times; he would have no reason to speak of that.

Q. How much money had you borrowed from him several times before that? A. I cannot state it.

Q. Can you state any amount?

A. I can state one particular amount of a loan I borrowed of him was fifteen dollars.

Q. Name some others.

A. I could not name any others that I could testify to for a certainty, but on the 23d or 24th of August I borrowed fifteen dollars of him.

(Testimony of M. P. Dunham.)

Q. That is the only one you can name?

A. That is the only one except when I borrowed money off him to pay up on the claim.

Q. Then did Mr. Cobban take you to his lawyers this morning?

A. No, sir; I never saw Mr. Cobban this morning until he came to the office right here.

Q. When did you see either of these men? (Indicating Mr. Bickford and Mr. Walsh.)

A. I seen them this morning.

Q. To talk with them? A. Yes, sir.

Recross-examination.

(By Mr. BICKFORD.)

Q. In the conversation which you had with Mr. Cobban last night, you were talking mostly of Thunder Mountain, were you not?

A. Yes, sir; mostly of Thunder Mountain; he had been over in that country, knew it and I wanted to get some information he had.

Q. I will ask you to state if Mr. Cobban suggested you should testify in any particular manner in this case?

A. No, sir.

Q. Has never suggested to you at any time or under any circumstances what your testimony should be in this case?

A. No, sir; common sense would teach me what my testimony should be.

Q. In other words, you intend to tell the truth, the whole truth and nothing but the truth at all times?

(Testimony of M. P. Dunham.)

A. Yes, sir.

Q. You have never had suggested any contrary course to you? A. No sir.

Q. Either by counsel or parties you have talked with?

A. No, sir.

M. P. DUNHAM.

Subscribed and sworn to before me this 16th day of March, 1902.

HENRY N. BLAKE,
Examiner.

NELS OPSATA, a witness called by the complainant, being first duly sworn by the Examiner, testified as follows:

Direct Examination.

(By Mr. MAYNARD.)

Q. Mr. Opsata, what is your name?

A. Nels. C. Opsata.

Q. Was you born in Sweden?

A. No; in Norway.

Q. In Norway? A. Yes, sir.

Q. When did you come to this country?

A. In 1866.

Q. How old were you then?

A. About ten years old.

Q. Ten years old? A. Yes, sir.

Q. How long have you lived in Montana?

A. Since 1881.

Q. How old were you when you came to the United States? A. About ten years old.

(Testimony of Nels Opsata.)

Q. And you have lived in Montana since 1881?

A. Yes, sir.

Q. Are you a married man? A. Yes, sir.

Q. How many children have you got?

A. Haven't got any.

Q. Where do you live? A. Near Ovando.

Q. How far from Ovando? A. About nine miles.

Q. How long have you lived there?

A. A little over 12 years.

Q. In the same place? A. Yes, sir.

Q. What have you got there?

A. I have got a ranch.

Q. How big a ranch?

A. Why, pretty near three-quarters of a section.

Q. Three-quarters of a section?

A. Yes, sir.

Q. Do you know how many acres that is?

A. Five hundred and eighty.

Q. You own 580 acres of land?

A. Yes, sir.

Q. What was the first piece that you took up?

A. A homestead.

Q. That was 160 acres? A. Yes, sir.

Q. When did you homestead—when did you commence your homestead proceedings?

A. Why, I couldn't exactly give you the year—the date of the homestead. I have lived on the place ever since—about 12 years. I pre-empted it first, and then I homesteaded it afterwards.

(Testimony of Nels Opsata.)

Q. That was 160 acres? A. Yes, sir.

Q. Well, now, what is your other land?

A. Land that I bought from the railroad company.

Q. From what railroad company?

A. The Northern Pacific Railroad Company.

Q. Where is it?

A. It is right close to my homestead.

Q. Adjoining your homestead?

A. Not the railroad, not adjoining it.

Q. How many acres did you buy from the Northern Pacific Railroad? A. Seven forties.

Q. Seven forties? A. Yes, sir.

Q. How much would that be?

A. Two hundred and eighty acres.

Q. That is two hundred and eighty and a hundred and sixty acres? A. Yes, sir.

Q. Now, what other pieces of land do you own?

A. I own another piece of railroad land.

Q. Where is that?

A. About a mile from my homestead.

Q. Did you buy that from the Northern Pacific Railroad, too? A. Yes, sir.

Q. How much is that? A. That is a half section.

Q. A half section? A. Yes, sir.

Q. Well, you have got more than you claimed in the first place?

A. Well, sir; I didn't figure it up when you commenced to question me.

Q. Did you buy that of the Northern Pacific, too?

(Testimony of Nels Opsata.)

A. Yes, sir; I made two payments on that.

Q. You made two payments on that?

A. Yes, sir.

Q. Haven't got a deed to it then yet?

A. No, sir; I haven't.

Q. Did you buy it under a contract?

A. Yes, sir.

Q. Haven't you got another piece of land?

A. I have.

Q. The land that you took up under the Stone and Timber Act? A. Yes, sir.

Q. Now, what else have you got?

A. Got my personal property.

Q. The other piece of real estate is yours free and clear, is it? A. Yes, sir.

Q. Except the one that you got under a land contract?

A. Yes, sir.

Q. Now, then, you own the land that you took up under your Stone and Timber right? A. Yes, sir.

Q. You sold the timber to Cobban?

A. Sold part of it, yes.

Q. Now, Mr. Opsata, you filed on the 20th day of June, 1899?

A. I can't remember the date; I presume that was about the time.

Q. Will you please state the circumstances which led you to file? Just tell us in your own way, Nels, how you came to take up this Stone and Timber right.

A. Well, for one reason it was lying right between

(Testimony of Nels Opsata.)

land that I owned on both sides, and, consequently, I wanted it on that account. It is not in—the land is not any good only for what timber there is on it. There was some little timber on it—some very small patches here and there, and that is what led me to take it up, because I wanted it, it was adjoining my ranch.

Q. Because you wanted what?

A. Because I wanted it. It was adjoining my ranch.

Q. Does this 160 acres that you took up adjoin your ranch? A. Yes, sir.

Q. Which way?

A. It is adjoining on the east of my homestead, and on the west side of my railroad land—lays right between the two.

Q. Well, now you know an old soldier by the name of Barrett, don't you?

A. No, I don't believe I do.

Q. You don't think you know him?

A. No, I don't.

Q. Well, you know Mr. Catlin, don't you?

A. No, sir.

Q. Don't you know John B. Catlin?

A. No, sir.

Q. Nor Mr. Cobban?

A. I know Mr. Cobban, yes.

Q. Where did you first get acquainted with Mr. Cobban? A. Here in Helena.

Q. Here in Helena? A. Yes, sir.

(Testimony of Nels Opsata.)

Q. How far did you say that your ranch is from Ovando? A. About nine miles by the road.

Q. By the road? A. Yes, sir.

Q. And you go from Ovando in leaving your home when you want to go to Missoula? A. No.

Q. And if you are returning from Helena, would you go through Ovando? A. Yes, sir.

Q. Where would you—in coming from Helena, where would you leave the railroad? A. At Drummond.

Q. At Drummond, you would leave the railroad at Drummond? A. Yes, sir.

Q. And go through Ovando? A. Yes, sir.

Q. Whereas if you went on to Missoula and then wanted to go home, you wouldn't go through Ovando?

A. No, sir.

Q. But you know when you came here to file and when you came here to prove up how you returned when you went home? A. Yes, sir.

Q. Where?

A. Went on the railroad to Drummond and from there I went by team.

Q. And passed through Ovando?

A. Yes, sir, always do.

Q. Do you know Mr. Griswold?

A. I have had a couple of introductions to him.

Q. You have had a couple of introductions to him?

A. Yes, but I don't know him. I wouldn't know him if I met him.

(Testimony of Nels Opsata.)

Q. Wouldn't know him if you met him?

A. No, sir.

Q. Oh, you wouldn't know him if you met him?

A. No, I met him in Jakway & Faust's store, it is probably six or seven years ago.

Q. Six or seven years ago? A. Yes, sir.

Q. And you have had two introductions to him, one in Jakway & Faust's store six or seven years ago?

A. Yes, sir.

Q. Do you mean by that that you haven't seen Mr. Griswold to know him within that time?

A. No, not that I could say I have.

Q. Not for six or seven years? A. No, sir.

Q. In six or seven years you haven't seen him to know him? A. No, sir.

Q. And then on the two occasions that you were introduced to him it was while you were at Jakway & Faust's store in Ovando; is that right?

A. I don't understand you.

Q. On the two occasions that you were introduced to Mr. Griswold, it was while you were at Jakway & Faust's store in Ovando.

A. That is the place where I got my introduction to him, yes.

Q. And you had no business with him at that time?

A. No, sir.

Q. Never before? A. No, sir.

Q. Nor ever since? A. No, sir.

(Testimony of Nels Opsata.)

Q. Well, now, did you make up your mind unaided and without talking to anybody that you wanted to take up this stone and timber claim?

A. Certainly I did.

Q. Nobody talked with you? A. No, sir.

Q. You had no conversation with anyone in regard to what the people were doing around your part of the country about selling timber to Cobban?

A. No, I did not.

Q. What? A. I did not.

Q. Nor don't know anything about it?

A. Oh. I heard uite—I heard talk about it, hearsay here and there.

Q. Hearsay here and there? A. Yes, sir.

Q. What was that talk?

By Mr. WALSH.—We object to that for the reason that it is irrelevant and immaterial what the talk was, and further that it is hearsay.

By the EXAMINER.—You may answer the question.

A. Why, I heard some talk that people were taking up timber claims. I don't know as I ever heard anybody say that they was selling it to Cobban at that time.

Q. You won't swear but what you did, will you?

By Mr. WALSH.—We object to that as leading, and an attempt on the part of counsel for the Government to cross-examine his own witness, and to get him to answer all these facts the way he wants him to.

(Testimony of Nels Opsata.)

A. I don't quite understand what the questions refers to.

(The last five questions were re-read to the witness by the stenographer to which he then made further answer as follows:)

A. I won't swear but what I did hear some such talk.

Q. Yes.

A. I can't swear that I heard anybody say about selling to Cobban. I wouldn't swear to that.

Q. What I am anxious to know from you, Mr. Opsata, is this: Did you or did you not, at the time you filed on this location and made this entry, know from what you had heard, that Cobban was buying the timber?

By Mr. WALSH.—We object to that upon the ground that it is irrelevant and immaterial to any of the issues made by the pleadings in this case, and further that it is hearsay.

A. Yes, I heard that he was buying timber, from hearsay.

Q. Yes, that is what I am asking you about.

A. Yes, sir.

Q. Well, then, state who told you that, or who said that.

By Mr. WALSH.—We object to the question for the reason that it is irrelevant and immaterial and hearsay.

A. I couldn't give anybody's name with reference to that.

(Testimony of Nels Opsata.)

Q. What is that?

A. I couldn't give anybody's name in reference to that.

Q. Couldn't give anybody's name?

A. No, sir.

Q. Well, now, I want you to tell me all that you had heard at the time, about Cobban's purchases of the timber, and what the men could do to take up the claims with the timber on it and how much they would get.

By Mr. WALSH.—We object to the question propounded by counsel to the witness, for the reason that it is irrelevant and immaterial in the first place, and in the next place it is hearsay testimony.

By the EXAMINER.—You may answer the question

A. Well, I hadn't heard anything to know about these matters.

Q. Now, don't make too fine distinctions, Mr. Opsata. I don't ask you what you knew, I asked you to tell me what, under your oath, it was that you had heard.

By Mr. WALSH.—We object to the question propounded by counsel to the witness, for the reason that it is irrelevant and immaterial in the first place, and in the next place, it is hearsay testimony.

By the EXAMINER.—You can answer the question, never mind about these objections.

A. Well, I don't know as I had heard anything. I cannot just make up my mind what I had heard, of course.

(Testimony of Nels Opsata.)

Q. I am waiting patiently for your answer, sir.

A. Well, what is the question?

Q. I ask you to tell me what, under your oath, it was that you had heard?

A. I don't know as I had heard anything. I cannot make up my mind what I had heard.

Q. Mr. Opsata is that the best answer that you can give me to my question?

A. Yes.

Q. Well, now, is it not true that you made an entry —this entry that I will call your attention to later, the only entry you could make under the Stone and Timber Act from what you had heard?

By Mr. WALSH.—We object to that as leading.

A. That I made the entry just from what I had heard.

Q. Yes, sir, you made the entry because of what you had heard at the time I have called your attention to.

A. I made the entry because I wanted the land.

Q. Did you not make the entry because of the fact that you knew you could sell the timber to Mr. Cobban?

A. I presumed that I could sell it, but then I didn't know that I could sell it to Cobban at that time.

Q. But you heard that you could, had you not?

By Mr. WALSH.—We object to that for the reason that it is leading.

A. Well, I had heard that I might.

Q. Now, who did you hear that from?

(Testimony of Nels Opsata.)

A. Mr. Jakway.

Q. Yes, and Mr. Jakway is a member of the firm of Jakway & Faust at Ovando? A. Yes, sir.

Q. And you did this business through them, did you not? A. Yes, sir.

Q. Did you know at the time that you heard this from Mr. Jakway that they were agents of Mr. Cobban?

A. No, sir.

Q. They didn't inform you of that fact?

A. No, sir.

Q. Where were you when Mr. Jakway told you that you could sell the timber on that location to Mr. Cobban?

By Mr. BICKFORD.—That makes the third time that counsel has asked the witness that question, and he has said that Mr. Jakway told him he could sell it to Mr. Cobban. What he testified to was that he heard that he might be able to sell it to Mr. Cobban.

Q. Just give me an answer to my question. Not what my brother Walsh may have asked you in this way.

By Mr. WALSH.—Oh, yes, so long as you are continually trying to trap the witness I will see to it that you do not do it, or use it as a means to interrupt you so that its significance can be fully appreciated.

A. I couldn't state just where I was.

Q. How long a time was it before you left your home and started to Helena to make your filing?

(Testimony of Nels Opsata.)

A. From the time I left home until I got to Helena here—the second day I got to Helena from the time I left home.

Q. Who did you come with?

A. Mr. Stewart.

Q. Who is Mr. Stewart? A. Al Stewart.

Q. He is a neighbor of yours up there, is he?

A. Yes, sir.

Q. Where is he now?

A. He is home, I suppose. I don't know whether his name is Albert or Alfred.

Q. Do you know why he isn't here?

A. No, I don't.

Q. Who else came with you besides Alfred Stewart?

A. Nobody.

Q. Now, then, when you came with Alfred Stewart to Helena, fixing that time I ask you with reference to coming here, how long was it then, after that that you had the conversation with Mr. Jakway?

A. Some few days; I couldn't say how many.

Q. Well, give us your best judgment, and best recollection as to some few days by way of naming it.

A. Well, I should say a week; that is as near as I can come to it.

Q. Yes, within a week after you had the conversation with Mr. Jakway you started to Helena.

By Mr. WALSH.—We object to that as leading.

A. Yes.

(Testimony of Nels Opsata.)

Q. You had money enough of your own to pay your way here, didn't you?

By Mr. WALSH.—That is objected to as leading.

A. I always got the money whenever I wanted any, from Jakway & Faust.

Q. State now as to whether or not you wanted some money at the time you came here to Helena for the purpose of making your final proof, and whether you got it from Jakway & Faust.

By Mr. WALSH.—We object to that as leading.

A. I did.

Q. These gentlemen have the privilege of objecting but you answer just the same.

A. Yes, I went into the store and ask them for some money.

Q. Will you please tell me how much money you borrowed from them?

A. At that time I think it was $25.00 as near as I can recollect.

By Mr. WALSH.—We object to this for the reason that the witness has not said that he borrowed any money.

Q. Well, is it true that you borrowed it?

A. Well, they are just the same as my bankers there, for I get money whenever I want it. Sometimes I have money on deposit, and sometimes I do not, but I always get money whenever I want it.

Q. State to me whether at this time that you got the

(Testimony of Nels Opsata.)

$25.00 from Jakway before you came to Helena if you had any money on deposit with them.

By Mr. WALSH.—We object to that for the reason that it is leading and further upon the ground that it is irrelevant and immaterial.

A. I couldn't say whether I had at that time or not.

Q. State to me as to whether or not you ever at any time have any money on deposit with them when you don't know it.

A. I do. I have money on deposit there when I don't know the amount.

Q. I didn't ask that question. State whether or not you ever at any time have any money on deposit with them when you do not know it?

A. Yes, at various times I have for the reason that I deal with them, and I don't very often get my bills from the store, so I don't know; I couldn't just say when I have any money there and when I haven't.

Q. Now, just tell me what you mean by dealing with them? A. Dealing with them?

Q. Yes.

A. Why, they run a store there and I get my supplies from them, groceries and clothing, and things of that kind that they have to sell, that I need on the ranch.

Q. Is that your answer to the question; is that your full answer? A. Yes.

Q. In other words, that they kept a store, and when you wanted anything you got it, did you?

(Testimony of Nels Opsata.)

A. Yes, sir.

Q. And that is all the relationship that exists between you, is that what you mean?

A. Well, certainly, when I get any money I always deposit it with them again.

Q. Well, that is what I am asking you. You say you deposit money with them? A. Yes, sir.

Q. What do you mean by that, that you treat them as your bankers? A. Yes, sir.

Q. And when you get money, instead of keeping it yourself you go and deposit it there?

A. Yes, sir.

Q. Treating them as a bank? A. Yes, sir.

Q. Why, did you do that? A. Why?

Q. Yes.

A. Why, it is very often I make sales there, and I get a check and I don't have no bank account any place else, and so I just give them the check and they give me the credit for it when they collect the money from whatever bank it is on.

Q. That is when you sell something, and somebody gives you a check? A. Yes, sir.

Q. You leave the check with them?

A. Yes, sir.

Q. And then they send it and collect the money?

A. Yes, sir.

Q. And give you credit for it when they have collected it? A. Yes, sir.

Q. Well, now, is the credit that is extended to you

(Testimony of Nels Opsata.)

when the check that you give to them is cashed, anything more than a credit for a payment for goods that you have previously bought from them?

A. Well, sometimes it is more than for the bill that they have against me.

Q. Did you ever at any time in your life leave a check with them except when you were indebted to them, and with the understanding that when the check that you gave to them was in payment of the goods which you had previously purchased, and with the understanding that they would credit you with the amount of that check when it was cashed, and the balance if there was any left should be given to you the next time you called at the store?

By Mr. WALSH.—We make the demand at this time that counsel be compelled to divide his question so that the witness may understand and so that it will savor less of the nature of an argument and more of the nature of a question. We also object to that as being leading.

By the EXAMINER.—Now, you can answer the question.

A. No, sir, I always give them my check and tell them to give me credit for it.

Q. For what?

A. For the amount of the check.

Q. And give you credit for the amount of the check in payment of goods that you had previously bought from them?

(Testimony of Nels Opsata.)

A. Well, they could surely have credited it—given me credit for it or something of that kind, and if I didn't owe them any money, give me something to show that I wasn't owing them.

Q. I am asking—did you ever leave a check with Jakway & Faust when you were not indebted to them?

A. I did.

Q. How many times?

A. I couldn't tell you that.

Q. Can you state any particular time?

A. No, sir.

Q. You cannot state any particular time in your life that you ever left a check there when you were not indebted to them?

A. No, sir, I don't think I could.

Q. Well, isn't it true that you can name one particular time in your life when you left a check there; was it always in payment of goods or groceries or stuff which you had previously received from them?

By Mr. WALSH.—Well, he has already answered that.

By the EXAMINER.—You may answer the question.

A. Part of it might have been.

Q. Part of it might have been? A. Yes, sir.

Q. Yes, and the balance would come in after the payment for the stock?

A. The balance would be credited to me on their books.

(Testimony of Nels Opsata.)

Q. Now, then, will you please state to me, if at any time you knew the amount of any credit that you had upon their books in excess of the full payment for goods which you had previously bought from them?

A. I cannot give you any certain amount, no, sir.

Q. Will you swear to that, Mr. Opsata?

By Mr. WALSH.—We object to that as leading.

A. Yes, sir.

Q. At any time in your life you knew of your having credit of say, $50.00, on the books of Jakway & Faust over and above your indebtedness to them.

By Mr. BICKFORD.—We object to that for the reason that it is irrelevant and immaterial, and not responsive to any of the issues made by the pleadings in this case.

A. Yes, sir.

Q. When was that?

A. I cannot give you the date, but it isn't very long since, and—it isn't very long since I had a credit there of something over $200.00, but I cannot say just the amount.

Q. When was that?

A. That was sometime this fall—the first part of the winter.

Q. Sometime this fall or the first part of last winter, when you swear that you had a credit on their books of something like $200.00?

A. Something over $200.00.

(Testimony of Nels Opsata.)

Q. Well, then, now name some other time during the twelve years that you have lived out there that you can name one particular time when you had any credit—anything to your credit on their books?

A. That is the only time that I can recollect, the time and the amount as when I have stated.

Q. And you cannot specifically name the amount and the cause or the reason of your having that credit, can you?

By Mr. WALSH.—We object to that as leading and also as being irrelevant and immaterial.

Q. You know distinctly just exactly why you had that credit, do you not?

By Mr. WALSH.—That is also objected to upon the ground that it is irrelevant and immaterial to the issues in this case, and leading.

A. Why, I maybe sold some cattle, and I got a check, and I turned it right over to them.

Q. And it was because of the sale of the cattle last fall and your receiving the check that you received this as a credit that you are willing to swear to that; that is right, isn't it?

By Mr. WALSH.—We object to that also as being irrelevant and immaterial, and an effort upon the part of counsel for the Government to cross-examine his own witness.

A. Yes, sir.

Q. Now, Mr. Opsata, I ask you to name one other

(Testimony of Nels Opsata.)

instance when you knew of an existing credit at Jakway & Faust's over and above your indebtedness.

By Mr. WALSH.—We object to that as irrelevant and immaterial to the issues in this case.

A. I don't think I can give you any other time.

Q. Very well, so that on the 20th day of June, 1899, you borrowed $25.00 from Jakway & Faust to come here to Helena for the purpose of filing on your claim?

By Mr. BICKFORD.—We object to that because it is leading and the witness has not said anything of the kind, but on the contrary he has expressly told counsel for the Government that he did not know what the state of his accounts was at the time, or the time it was when he had money there, or the balance of the account either way.

A. I told them to give me $25.00. Yes, I think that was the amount, and charge me up with it.

Q. Did Stewart borrow his money, too?

A. I don't know.

Q. Do you know where he got his money, to come with? A. No, sir.

Q. Did you pay his expenses?

A. No, sir, I did not.

Q. You did not pay any of his expenses?

A. No, sir.

Q. You were together, were you?

A. Yes, sir, we were.

Q. You made your filing together, did you?

A. Yes, sir.

(Testimony of Nels Opsata.)

Q. Still you say you don't know where Stewart got his money?

By Mr. WALSH.—We object to that for the reason that it is irrelevant and immaterial to the issues in this case.

A. No, sir.

Q. Didn't he tell you?

By Mr. WALSH.—We object to that also for the reason that it is irrelevant and immaterial to the issues in this case.

A. No, sir.

Q. He did not tell you where he got his money?

By Mr. WALSH.—We object to that upon the ground that it is irrelevant and immaterial and has no bearing upon the issues in this case.

A. No, sir.

Q. Do you know of his getting money of Jakway & Faust?

By Mr. WALSH.—We object to that also for the reason that it is irrelevant and immaterial.

A. No, sir.

Q. Did you hear of it?

By Mr. WALSH.—We object to that upon the ground that it is leading in the first place, and it is hearsay in the next place, and also irrelevant and immaterial.

Q. You might have heard it?

By Mr. BICKFORD.—We object to that also for the

(Testimony of Nels Opsata.)

reason that it is leading and hearsay and irrelevant and immaterial.

A. Yes, sir.

Q. Well, did you hear it?

By Mr. WALSH.—We object to that for the reason that it is hearsay and immaterial and irrelevant.

A. I couldn't say that I did.

Q. You won't swear but what you did?

By Mr. BICKFORD.—We object to that also as being hearsay, irrelevant and immaterial, and an effort on the part of counsel for the Government to cross-examine his own witness.

A. I cannot say—I cannot swear that I did.

Q. Now, then, what did you do with that $29.00?

By Mr. WALSH.—He didn't say it was $29.00, and we object to it as being a misstatement of the testimony of the witness by counsel.

Q. Twenty-five dollars?

A. Paid my expenses.

Q. Did you use it—did you use ten dollars of it for the purpose of paying for your filing ?

By Mr. WALSH.—We object to that upon the ground that it is leading.

A. Pay it for filing on my land?

Q. Yes, sir.

A. I don't know. I cannot say now.

Q. Did you pay something of it?

By Mr. WALSH.—We object to that as being leading.

(Testimony of Nels Opsata.)

A. Yes, sir.

Q. Of the money that you borrowed of Jakway & Faust?

By Mr. WALSH.—We object to that also upon the ground that it is leading and irrelevant and immaterial.

A. Yes, sir.

Q. And as a matter of fact, if the legal fees at the land office were ten dollars, you paid them?

By Mr. WALSH.—We object to that as being leading.

A. Yes, sir.

Q. You paid what they asked you to pay?

By Mr. WALSH.—We object to that also as being leading, and further that it is irrelevant and immaterial.

A. Yes, sir.

Q. Now, then, when you went home did you stay there during the sixty days that elapsed?

A. At home do you mean?

Q. Yes, sir. A. Yes, sir.

Q. What did you do—anything about it at all, in any way anything about taking any steps that are required by law for the purpose of proving up?

By Mr. BICKFORD.—We object to that for the reason that no steps are required by law between the filing and the making of final proof.

Q. Did you have anything to do, did you do a single solitary thing, Mr. Opsata, from the time you filed until the time you made your final proof?

(Testimony of Nels Opsata.)

By Mr. WALSH.—We object to that for the reason that it is leading, and an attempt to cross-examine the witness.

A. Certainly, I was working all the time.

Q. Certainly, you were working. I never knew either a Norwegian or a Swede that didn't work as far as that is concerned. I mean as far as taking up this land is concerned? Did you, Mr. Opsata?

A. Well, I did, of course, when the time came that I should make my final proof, I came over here to Helena.

Q. Of course, I don't question that. What I mean and what I am asking you now is, did you do one single thing that you can remember of or recall between the time of your filing and the time of your coming back here to Helena for the purpose of proving up?

By Mr. BICKFORD.—We object to that for the reason that it is leading, and further that it is not required by law that the entryman should do anything between the time of filing and the time of making his final proof.

A. I don't recollect if I done anything in regard to the land.

Q. I show witness his preliminary statement and ask him if that is his signature. A. Yes, sir.

Q. Who wrote that—who filled in those blanks; that is, the original filing statement that you made at the time you first came over here?

A. Mr. Langhorne, my attorney.

Q. Who is he? A. He is a lawyer.

(Testimony of Nels Opsata.)

Q. Where?

A. Here in Helena. He was recommended to me to make the papers out.

Q. He was?

A. Mr. Langhorne was; yes, sir.

Q. Did you go and see him when you came here?

A. Yes, sir.

Q. Did you know him?

A. I did know him; yes, sir.

Q. Where had you met him, Mr. Opsata?

A. Over in Ovando.

Q. Who told you to go and see him?

A. Mr. Jakway.

Q. Mr. Jakway told you to go and see Mr. Langhorne?

A. Yes, sir.

Q. And did Stewart go with you?

A. Yes; he went in with me—he left Mr. Langhorne to fix up our papers.

Q. He referred you to him, did he?

A. Yes, sir.

Q. And you and Stewart went there to this lawyer that Jakway told you to go, and he filled out your papers?

A. Yes, sir.

Q. Now, then, who gave you this description, Mr. Opsata? A. The description of the land?

Q. Yes.

A. Who gave him the description of the land, do you mean?

Q. Yes; who gave the lawyer the description of the land?

(Testimony of Nels Opsata.)

A. I suppose I gave him the description.

Q. Well, who gave you the description to give to Mr. Langhorne? A. I had that all the time.

Q. You had that all the time?

A. Yes; I had that all the time—ever since I made my homestead I had that; I knew the description of the land.

Q. Of course, sure. You had that all the time and you carried this description about in your pocket.

A. I did.

Q. From the time that you went out and looked at the land and run the land? A. I didn't run no line.

Q. You did not run any lines? A. No, sir.

Q. Well, what time—what did you do at the time you made the location? You did something, didn't you?

A. I don't know. I have been acquainted with that land ever since I have lived there and I knew the land just where the lines were. The lines would be on every corner of it. It was probably fixed at that time.

Q. Is that right? Is that the way it was?

A. Yes, sir.

Q. Supposing you are familiar with this room and was in it every day for months, from that knowledge of this room could you tell the exact size of it in inches?

A. Oh, no.

Q. You would have to measure it, wouldn't you?

A. Yes, sir.

Q. Did you, as a matter of fact, measure your land?

A. No, sir.

Q. You never went up there for that purpose, did you?

(Testimony of Nels Opsata.)

A. No, sir; I did not.

Q. And you didn't know the exact geographical divisions of it then, did you?

A. I know it was a square quarter in the northeast corner of the section.

Q. But did you, as a matter of fact, simply from your knowledge of the location of the land without ever having made any examination or measurement of it for that purpose, would you be able to tell that it was the southeast quarter of section 2, in township 15 north, of range 13 west.

By Mr. WALSH.—We object to that as leading.

A. I was able to tell that from the surveyor's markings—the surveyor's markings on the corners.

Q. Even though you had never gone out and looked at it?

A. Certainly I did. I was up there several times.

Q. Well you just said a few minutes ago that you had never been up there.

By Mr. BICKFORD.—No, he didn't; he said he had been up there several times.

Q. Isn't it a matter of fact that Mr. Jakway, when he told you to go and see this location didn't he give you that description?

By Mr. WALSH.—We object to that for the reason that it is irrelevant and immaterial and leading.

A. I don't think that he did.

Q. Will you swear that he did not?

A. I will.

(Testimony of Nels Opsata.)

Q. Will you swear exactly as to the time and circumstances under which you got that particular description?

By Mr. WALSH.—He has already answered that question, that he knew it was in the northeast quarter of the section and that he was familiar with it.

By Mr. MAYNARD.—I am not asking you, sir.

By Mr. WALSH.—No; but I am answering it.

By the EXAMINER.—Well, put in your objection, if you have any to put in.

By Mr. WALSH.—I have put in my objections.

By the EXAMINER.—Well, I understood that Mr. Walsh was putting in his objections, but I didn't know what it was. I didn't know that he had finished.

A. I cannot swear as to the time but I knew the description of it, knew ever since I located on my homestead, but I didn't know it was vacant until I came here to make my entry.

Q. Now, then, as I understand it, you now swear that you left your home and came here under expense to locate on a certain particular description without knowing that you could locate on it at all?

By Mr. WALSH.—We object to that upon the ground that it is leading. It is also an attempt on the part of counsel to cross-examine his own witness.

Q. Is that the way you wish it to be understood, Mr. Opsata?

A. I wanted to locate on it if it was vacant.

Q. And you didn't ascertain that fact until you had

(Testimony of Nels Opsata.)

left your home and incurred the expense of coming up here?

By Mr. WALSH.—We object to that as leading and as irrelevant and immaterial and an attempt on the part of counsel to cross-examine his own witness.

A. I had never heard that it was not vacant, and was sure of it when I got here.

Q. Well, weren't you sure of it before you came here?

A. I couldn't be.

Q. You couldn't be sure of it until you came here?

A. No, sir.

Q. Well, now, you may state as to whether you have any recollection of any time or place in addition to this description, this particular description of land, of getting the names of your witnesses.

By Mr. WALSH.—We object to that also as irrelevant and immaterial and leading, and an attempt upon the part of counsel to cross-examine his own witness, and further upon the ground that the question is unintelligible.

A. I don't know as I can answer it. I don't know all the question; any place where I was getting the names?

Q. Or any place where you gave the names of your witnesses?

By Mr. WALSH.—We object to that as an effort on the part of counsel to cross-examine the witness.

A. No, sir, I couldn't give you that.

Q. Well, can you state their names?

A. Yes, sir.

Q. Well, give them.

(Testimony of Nels Opsata.)

A. L. Stewart was one, and Louis Jakway was another, and I believe Charles Jakway was another witness, and C. L. Griswold. I am not certain about C. A. Jakways whether he was a witness or not, whether he was put in when I was making my filing. Louis Jakways was with me at the time when I proved up.

Q. Now, if Mr. Chauncey L. Griswold was one of your witnesses, how was it that he became one of your witnesses, when you said a little while ago that you had never seen him or known him except six years ago?

A. Mr. Jakway said that he would know the character of the land.

Q. Mr. Jakway said that?

A. Yes, sir, he told me that Griswold would know the character of the land and could be a witness.

Q. Then Mr. Jakway gave you the name of Mr. Griswold as a witness, did he? A. He did, yes, sir.

Q. And you didn't know anything about whether Mr. Griswold knew anything about this description or not, except as Mr. Jakway told you?

By Mr. WALSH.—That is also objected to upon the ground that it is leading, and clearly an attempt on the part of counsel to cross-examine his own witness.

Q. Is that so, Mr. Opsata? A. Yes, sir.

Q. Well, that is one of the witnesses that Mr. Jakway gave you?

By Mr. WALSH.—That is also objected to as being leading, and an attempt to cross-examine the witness.

A. Yes, sir.

(Testimony of Nels Opsata.)

Q. Now, then, Louis A. Jakway, is he the Jakway that you have just spoken about? A. No.

Q. Well, what is the Jakway's first name that you have just referred to? A. Charles, C. A.

Q. Oh, Charles A. Jakway? A. Yes, sir.

Q. Well Charles A. Jakway, he was your second witness, the man that gave you the name of Griswold as your first witness?

By Mr. WALSH.—We object to that for the reason that it is leading.

Q. Is that so, Mr. Opsata?

A. I believe so; I don't know whether he was a witness or not.

By Mr. BICKFORD.—I will state to the Court that he has stated to his best recollection as to who the witnesses were. He has a right to refresh his recollection as to who the witnesses were by looking at the papers.

By Mr. WALSH.—Mr. Opsata, you can look at the newspaper advertisement with reference to this and refresh your recollection about it.

By Mr. MAYNARD.—Here is the paper with the names of the witnesses. Do you need any spectacles to look at it?

A. Yes, that is right. No, I don't need any spectacles.

By Mr. MAYNARD.—I can loan you some if you do.

By the WITNESS.—No, I don't need any.

Q. Now then, this Mr. Jakway that gave you the name of Griswold was one of your other witnesses?

(Testimony of Nels Opsata.)

A. Yes, sir.

Q. That was two. Now, who is this L. A. Jakway?

By Mr. WALSH.—He has already answered that question. He is a brother of this other.

Q. He is a brother of this other Jakway, is he?

A. Yes, sir.

Q. And Stewart is the other witness that came with you at the time? A. Yes, sir.

Q. And those are your four witnesses?

A. Yes, sir.

Q. Now, when Mr. Jakway told you that Griswold could be one of your witnesses, he also told you that you could name him and his brother, did he not?

By Mr. WALSH.—We object to that upon the ground that it is leading.

A. Yes, sir.

Q. Then those are three, and Stewart, your companion, that fixes these names as the ones you gave to the register as your witnesses?

By Mr. WALSH.—We object to that upon the ground that it is leading.

A. Yes, sir.

Q. Did you carry those in your head, or were they on a piece of paper?

By Mr. BICKFORD.—We object to that also as being leading.

A. I couldn't say.

Q. You couldn't say as to that?

(Testimony of Nels Opsata.)

A. No, sir, I could not.

Q. You couldn't say whether those names were written out or not?

By Mr. WALSH.—That is also objected to upon the ground that it is leading.

A. I don't know as I carried them in my head, or whether I had them written on paper.

Q. You wouldn't swear that you did, would you, Nels?

By Mr. WALSH.—That is also objected to upon the ground that it is leading.

A. No, I couldn't swear that I did or did not.

Q. Certainly, and you won't say but what Mr. Jakway down in Ovando gave you a slip of paper with these four witnesses' names on it?

By Mr. WALSH.—We object to that as being irrelevant and immaterial, and having no bearing upon any of the issues in this case.

A. I don't recollect that he did.

Q. But he might have done it and you didn't know anything about any of these men that would be your witnesses, did you? A. Yes, I did.

Q. You didn't know anything about any of these men being witnesses for you on this location except as Jakway had told you, did you?

By Mr. WALSH.—We object to that also upon the ground that it is irrelevant and immaterial to the issues in this case, and an attempt on the part of counsel to cross-examine the witness.

(Testimony of Nels Opsata.)

A. Yes, sir, I did. Of course, I inquired to know where I could find somebody that knew the character of the land.

Q. And who did you make that inquiry of?

A. Mr. Jakway.

Q. Mr. Jakway gave you those names?

By Mr. BICKFORD.—We object to that upon the ground that it is leading.

A. Yes, sir, he told me of them.

Q. Now, Nels, didn't he at the same time when he gave you these four names, write them down on a piece of paper, and give you just the particular description of the land?

By Mr. WALSH.—We object to that as irrelevant and immaterial and leading, and an attempt to cross-examine the witness.

A. No, I don't think that he did.

Q. Well, will you swear that he did not?

By Mr. WALSH.—We object to that also as being leading, and also irrelevant and immaterial, and an attempt to cross-examine the witness.

A. As near as I can recollect.

Q. Do you know who were present at the time you proved up?

A. In the land office, do you mean?

Q. Yes, sir.

A. Al Stewart—I was there, and Al Stewart and Louis Jakway.

(Testimony of Nels Opsata.)

Q. Louis Jakway, a brother of the Jakway, a member of the firm of Jakway and Faust?

A. Yes, sir.

Q. They came here to Helena with you?

By Mr. BICKFORD.—We object to that upon the ground that it is leading.

A. Yes, sir.

Q. Will you be kind enough to state to the Court here as to who paid your expenses up this time?

A. I paid my own expenses.

Q. You did?

A. Yes, sir, I did. Certainly, I borrowed the money.

Q. Oh, you borrowed the money?

A. Well, yes. That is, got it from the same place that I always did.

Q. And on this second trip to Helena, when you came to prove up, how much money did you borrow of Messrs. Jakway & Faust, at that time?

By Mr. BICKFORD.—We object to the question so far as asked the witness, for the reason that it assumes that he ever borrowed any money on account of this land before the witness has expressly stated anything relative to that matter. The witness having said that he came here but whether he had any money on deposit or not, at that time he does not know.

Q. Now, Nels, will you be kind enough to answer that question?

A. The money that I had to pay my expenses with. Of course, I had no cash.

(Testimony of Nels Opsata.)

Q. Well, how much was that?

A. I couldn't say just as to the amount. I couldn't say as to that. I had enough money to come here and go back with.

Q. Oh, you had money enough of your own?

A. I got it in the store just as I came out from Ovando.

Q. Just to pay your own expenses?

A. Yes, sir.

Q. Will you tell us as near as you can how much that was?

A. Not exactly. I only know that I got enough to come and go back with.

Q. Well, was it ten dollars? A. Yes, sir.

Q. Was it more, twenty dollars?

A. Yes, sir.

Q. Thirty dollars?

A. I don't think it was thirty dollars. It was between twenty and thirty, somewhere.

Q. That you borrowed on your way here at Ovando, got it of Mr. Jakway? A. Yes, sir.

Q. And they charged it up to you, this sum?

By Mr. WALSH.—We object to that upon the ground that it is leading and irrelevant and immaterial to any of the issues in this case.

A. Yes, sir.

Q. Are you able to say whether at that time you had any credit on their books?

A. No, I couldn't say about that.

(Testimony of Nels Opsata.)

Q. Have you any recollection on the subject?

A. No.

Q. Are you unable to swear now that when you stepped into the store to borrow at least twenty-five or thirty dollars, and knew that it was to be a loan—that it was to be a pure loan, or whether you had a right to ask it of them on account of any existing credit on their books?

By Mr. WALSH.—We object to that for the reason that it is an attempt to cross-examine the witness.

A. No, sir, I couldn't say whether it was a pure loan or not, or whether I had anything to my credit at the store at the time.

Q. Do you know why Mr. Louis Jakway came to Helena with you and Stewart?

A. He was a witness.

Q. He was a witness?

A. I had to have two witnesses.

Q. How far does Alfred Stewart live from your place?

A. Why, I should judge about three miles.

Q. How far does Jakway live?

A. Which Jakway, Louis?

Q. Louis Jakway, yes?

A. Louis Jakway, he lives right in Ovando.

Q. Now, Mr. Opsata, was that the only reason that you know of that Louis Jakway came to Missoula—came to Helena with you at the time you came here to make your filing?

(Testimony of Nels Opsata.)

By Mr. WALSH.—We object to that as leading.

Q. To be a witness for you?

A. That is the only reason that I know.

Q. The only reason that you know?

A. Yes, sir.

Q. Will you be kind enough to tell me who paid the money into the land office? A. I did.

Q. From did you receive that money?

A. From Mr. Faust, Jakway's partner.

Q. Mr. Faust, Jakway's partner.

Q. Mr. Faust of the firm of Jakway & Faust.

By Mr. BICKFORD.—Well, he said he received it from Mr. Faust.

A. Yes, sir.

Q. Of the firm of Jakway & Faust?

A. Yes, sir.

Q. Did you receive that money on the same day that you received your $25.00 to pay your expenses?

By Mr. WALSH.—We object to that as being irrelevant and immaterial.

A. I did.

Q. Yes, sir. In other words, you borrowed twenty or twenty-five dollars or thirty dollars to pay your necessary traveling expenses, and you got enough money to pay for your land from the same people?

By Mr. WALSH.—We object to that as leading, and irrelevant and immaterial, and further as an attempt to cross-examine his own witness.

(Testimony of Nels Opsata.)

A. Yes, sir.

Q. Was Stewart with you?

A. He came up with me at the time.

Q. You have no knowledge about his getting any money, have you?

By Mr. WALSH.—We object to that as being leading and irrelevant and immaterial to the issues in this case, and furthermore it has already been gone over before, and he said he didn't have any knowledge about it whatever.

Q. Did you?

A. Yes, not to pay his expenses, though.

Q. No, I mean to pay for his land.

By Mr. WALSH.—We object to that as being leading and irrelevant and immaterial to the issues in this case, and furthermore it has already been gone over before, and he said he didn't have any knowledge about it whatever.

A. Yes, sir.

Q. You got it at the same time?

By Mr. WALSH.—We object to that as being leading and irrelevant and immaterial to the issues in this case, and furthermore it has already been gone over before and he said he didn't have any knowledge about it whatever.

A. Yes, sir.

Q. So both of you gentlemen, having got your money to pay for the land from Jakway & Faust, you came

(Testimony of Nels Opsata.)

here in company with Mr. Jakway, the brother of the Jakway of the firm of Jakway & Faust?

By Mr. WALSH.—We object to that as being no question at all, and the matter has already been testified to by the witness.

Q. That is right, isn't it?

By Mr. WALSH.—We object to that as leading, and further upon the ground that it is irrelevant and immaterial to any of the issues in this case, and furthermore it has been gone over fully before, and the witness has said that he had no knowledge of the matter at all.

A. We came here together, yes.

Q. Now, then, is it not true that you came here, and thereafter when this money that you got from Jakway & Faust was paid into the land office and was paid for your land, that you sold that same land to their principal, Robert M. Cobban?

By Mr. WALSH.—We object to that as being leading.

Q. Just as soon as it was possible to give a deed of yourself and wife?

By Mr. WALSH.—We object to that as being leading.

Q. Is that not true?

By Mr. WALSH.—We object to that also as leading.

A. I sold after I got home from Helena.

Q. Yes, sir, and where was the deed signed by you and your wife?

(Testimony of Nels Opsata.)

A. Right in the store there at Jakway & Faust's.

Q. And that deed was signed by you and your wife after you got home?

By Mr. WALSH.—We object to that also as being leading.

Q. Or while you were on your way home?

By Mr. WALSH.—We object to that as being leading.

A. No, sir, after I got home.

Q. That is, after you had proved up and used this money of theirs, for the purpose of deeding this land you came back, you and your wife, and went back to the store, and conveyed your land.

By Mr. WALSH.—We object to that as being leading, and further that it assumes that the money was from the firm of Jakway & Faust when the witness has expressly stated that he borrowed the money from them, and that, therefore, it was his money and not theirs.

A. I didn't go there expressly for that purpose.

Q. But whether you went expressly for that purpose or not you did take your wife to the store, and while you were at the store you did sell this land to Mr. Cobban?

By Mr. WALSH.—We object to that for the reason that it is leading, and upon the further ground that it is irrelevant and immaterial, and it further appears that he did not sell this land to Mr. Cobban.

A. I will correct that, of course I didn't sell the land, I only sold the timber.

Q. Well, I mean the timber? A. Yes, sir.

(Testimony of Nels Opsata.)

Q. And the deed and the final proofs in the case was made on the 6th day of September, 1899, and the date of the receiver's receipt—the date of the receipt is the 6th day of September, 1899, and is as follows: "Received of Nels O. Opsata of Deer Lodge County, Montana, the sum of four hundred dollars, being in full for the southeast quarter of section number 2, in township 13 north of range 13 west, containing one hundred and sixty acres of land." That was on the 6th day of September, here in Helena, and on the 9th day of September, three days after, the deed showed that you and your wife conveyed the timber to Cobban.

By Mr. WALSH.—We object to that as being irrelevant and immaterial, and we move to strike out the statement of counsel, as being no question propounded to the witness.

By Mr. MAYNARD.—I read from the deed also:

"This indenture, made the 9th day of September, in the year of our Lord one thousand eight hundred and ninety-nine—"

By Mr. BICKFORD.—Just a moment; we object to that, we object to the reading of the deed by counsel for the reason that the deed states that it was executed on the 9th day of September and counsel endeavors to make it appear that the witness has executed it on the 6th day of September.

By Mr. MAYNARD.—What I said was that the date of the final proofs, and the date of the making of the

(Testimony of Nels Opsata.)

final proofs was made in the register's office on the 6th day of September, as shown by the official paper in evidence in this case. And that three days thereafter, on the 9th day of September, from the deed which is in evidence, and from the deed which I read, it appears that the witness conveyed the land to Mr. Cobban.

By Mr. BICKFORD.—We move to strike out the statement of counsel for the reason that it is argumentative.

By Mr. MAYNARD (reading).—"This indenture made the 9th day of September in the year of our Lord one thousand eight hundred and ninety-nine between Nels O. Opsata, and Birdie Opsata, his wife, of Deer Lodge County, State of Montana, parties of the first part, and Robert M. Cobban, of Missoula, Missoula County, Montana, the party of the second part, witnesseth, that for and in consideration of the sum of eight hundred dollars, lawful money of the United States of America, to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, do by these presents, grant, bargain, sell, etc., all the saw and tie timber, growing or being upon the southeast one-quarter of section 2, township 5 north, range 13 west, together with the right of removal at any time within ninety-nine years of the date hereof, and also the right of ingress and egress, over and upon said lands, for the removal of the timber situated in the vicinity thereof.

And on this 9th day of September, in the year of our Lord, one thousand eight hundred and ninety-nine, be-

(Testimony of Nels Opsata.)

fore me, H. J. Faust, a notary public in and for the county and State aforesaid, personally appeared Nels O. Opsata and Birdie Opsata, his wife, known to me to be the persons described in the within instrument, and acknowledged to me that they executed the same.

In witness whereof, I have hereunto set my hand and affixed my notarial seal the day and year first above written.

H. J. FAUST

Notary Public, in and for Deer Lodge County, State of Montana."

By Mr. WALSH.—We move to strike out the statement of the counsel for the reason that it is not a question propounded to the witness.

Q. Who is this H. J. Faust, this Notary Public, is he a member of the firm of Jakway & Faust?

A. Yes, sir.

Q. And at that time, Mr. Opsata, how much money did Mr. Faust pay you?

A. He gave me credit for some on the books. I think Mr. Jakway told me he gave me credit for fifty dollars.

Q. You didn't receive this fifty dollars in cash?

A. No, sir.

Q. Were you owing him at the time?

A. It would be all the same.

Q. Were you owing him any money at the time?

A. I couldn't tell.

Q. Have you since found out?

A. I don't know as I have.

(Testimony of Nels Opsata.)

Cross-examination.

(By Mr. BICKFORD.)

Q. We are getting at this back end, too. I will ask you concerning the last testimony you gave with reference to giving you credit for fifty dollars; did he give you credit for fifty dollars at that time, or did he give you credit or fifty dollars and also the purchase price of the land? A. Yes, sir.

Q. You were paid four hundred dollars for the land, weren't you? A. Yes.

Q. And didn't he give you credit for $400.00 when you deeded and fity dollars besides that? In other words, you didn't pay out four hundred dollars here to the land office for the land, and then only get credit for fifty dollars when you got back to Ovando?

By Mr. MAYNARD.—He has testified to that and explained what he did.

By Mr. BICKFORD.—Yes, I know, I am asking him about it.

A. Why, he gave me credit for four hundred dollars.

Q. You never saw the entry in the books?

A. No, sir.

Q. Well, it would be rather a bad bargain for him to pay you four hundred dollars on this land that you sold, and for you only to get fifty dollars out of it.

A. Yes, sir.

Q. That would make you short three hundred and fifty dollars? A. Yes, sir.

(Testimony of Nels Opsata.)

Q. Then if you had four hundred dollars for the land and only got fifty dollars, there would still be a difference of three hundred and fifty dollars?

A. Yes, sir.

Q. Why did you get fifty dollars additional in the four hundred?

A. I—Jakway & Faust must surely have given me credit for the whole amount.

Q. Well, what would be the whole amount?

A. What money I had been getting from them, and going out to Helena twice, and also for what money I needed to make the proof.

Q. Well, didn't they give you—they didn't give you fifty dollars more than that. Didn't they give you back all that money and fifty dollars besides?

A. They surely must have.

Q. Now, you say that Jakway & Faust have acted as your bankers, as well as your merchants for a long time? A. Yes, sir.

Q. Did you ever sell any produce to them; hay or grain or potatoes, or anything that you raised on your place? A. Sometimes I sold to them, yes.

Q. Well, when you deal in that way do you get credit? A. Get credit? Yes sir.

Q. Is that the way your accounts are kept with Jakway & Faust, and is that the way they have been kept ever since you have dealt with them?

A. Yes, that is the way they have been carried on ever since I have been dealing with them.

(Testimony of Nels Opsata.)

Q. Sometimes, as I understand you, your account is over paid, and sometimes they owe you money?

A. Yes, sir.

Q. Did they ever render you a statement of account as to how you stood with them? A. Yes, sir.

Q. And those statements will show you whether they owed you or you them? A. Yes, sir.

Q. And you have been getting these statements ever since you have been dealing with them?

A. Yes, sir, not very often though.

Q. Well, how is it generally; do they owe you or do you owe them?

A. Well, within the last year I believe I owed them a little more than they owed me.

Q. Well, this is three or four years ago, the accounts were the other way, weren't they, then?

A. Yes, sir, they were then.

Q. You spoke of selling cattle in your examination in chief? A. Yes, sir.

Q. Are you possessed of stock and cattle?

A. Yes, sir.

Q. How many head of horses have you now?

A. Probably fifteen head.

Q. How many head of cattle have you?

A. Somewheres in the neighborhood of eighty head.

Q. You are in the horse and cattle business, the business of raising them? A. Yes, sir.

Q. Have you ever had occasion to sell horses and

(Testimony of Nels Opsata.)

cattle to Jakway & Faust within the last five or six years? A. No, sir, I never sold them any horses.

Q. You have sold them cattle, have you?

A. Yes, sir. I don't know, though, as I ever sold them cattle directly.

Q. Well, now, in—when you sold horses and cattle and took checks in return for them what did you do with the checks usually?

A. I just gave them to Jakway & Faust, and they collected the money, of course.

Q. Now, at the time when you made this timber and stone entry had you made any bargain or agreement to sell this land to anybody after you got title to it?

A. After I got title to it?

Q. Yes, sir, had you made any bargain at the time you made your entry? A. No, sir.

Q. Had you made any bargain to sell the timber on it or any part of it at the time you made your entry?

A. I told Mr. Jakway that he could sell it for me whenever I proved up on it.

Q. Yes, but you hadn't made any bargain with him for the sale of it at that time? A. No, sir.

Q. You evidently have become a citizen of the United States? A. Yes, sir.

Q. How did you do that, by declaring your intention to become a citizen, or by the naturalization of your father?

A. I got my naturalization papers, and then I got my citizen papers here after I came to Montana.

(Testimony of Nels Opsata.)

Q. Then at the time you made this timber and stone entry you were a citizen of the United States?

A. Yes, sir.

Q. A naturalized citizen of the United States?

A. Yes, sir.

Q. And you were entitled to make timber and stone entries under the laws of the United States?

A. I suppose I was, yes, sir.

Q. You had never made a timber and stone entry prior to that time, had you? A. No.

Q. This is the first one you had ever made?

A. Yes, sir.

Q. Now, at the time when you went to Helena to make this sworn statement before the Helena land office had you ever had any talk with Mr. Cobban or anyone else about selling this land or the timber on it?

A. No, sir.

Q. You say here, speaking of the land that it contains no mining or other improvements?

A. Yes, sir. And further that I have made no other application to purchase under said Act.

Q. And further, you were asked that the land contains no valuable deposit of gold, silver, cinnabar, copper or coal? A. Yes, sir.

Q. And also "I do not apply to purchase the land above described" (meaning the timber and stone land) "on speculation, but in good faith to appropriate it to my own exclusive use and benefit, and that I have not directly or indirectly made any agreement or contract,

(Testimony of Nels Opsata.)

or in any way or manner, with any person or persons whomsoever, by which the title I may acquire from the Government of the United States may inure in whole or in part to the benefit of any person but myself." Was that statement true, Mr. Opsata? A. Yes.

Q. Then nobody had hired you to go upon this land and take up at all? A. No, sir.

Q. And nobody had urged you to do so?

A. No, sir.

Q. And nobody had asked you to do so?

A. No, sir.

Q. You went there of your own free will and of your own motion, to take up this land then?

A. Yes, sir.

Q. As I understand you this land joins other land owned by you. A. Yes, sir.

Q. At the time when you made your final proof, you and your witnesses were here in Helena and among other things you testified that this land was chiefly valuable for the timber on it. Why did you say it was chiefly valuable for the timber on it? Was it because it was not good for agricultural land?

A. Yes, it was not agricultural land.

Q. You couldn't cultivate it or raise crops on it then?

A. It is hilly, and there is low lands all around it, and you could never get any water on it.

Q. Then it is of no value as agricultural land, is it?

A. Oh, no.

Q. You were asked this question at the land office?

(Testimony of Nels Opsata.)

"Have you sold or transferred your claim to this land since making your sworn statement, or have you directly or indirectly made any agreement or contract in any way or manner with any person whomsoever, by which the title you may acquire from the Government of the United States, may inure, in whole or in part to the benefit of any person except yourself?"

A. Yes, sir.

Q. This was at the time that you made your final proof? A. Yes, sir.

Q. And your answer to that is, "No, sir." Was that answer true? A. Yes, sir.

Q. You were also asked this question, Mr. Opsata, "Do you make this entry in good faith for the appropriation of the land exclusively to your own use, and not for the use or benefit of any other person?"

A. Yes, sir.

Q. To which question you answered, "I do." Was that true, Mr. Opsata? A. Yes, sir.

Q. This question was also asked you at that time: "Has any other person than yourself, or has any other firm, corporation or association any interest in the entry you are now making, or in the land or in the timber thereon?" And your answer to that was, "No, sir." Was that true? A. Yes, sir.

Q. Then as I understand it you went to the land office for the purpose of making final proof on this land absolutely for the purpose of getting this piece of land for yourself, and not for the benefit of anybody else?

(Testimony of Nels Opsata.)

A. Yes, sir.

Q. You had no talk and made no bargain with anybody else concerning the land? A. No, sir.

Q. Or any agreement to sell it to any other person?

A. No.

Q. Now, with reference to your afterwards selling it. Who made you an offer for the land? Who offered to buy the timber on the land? A. Why—

Q. Who wanted to buy the timber on the land, do you remember that?

A. I offered it myself. That is, I offered it, I told Mr. Jakway to sell it.

Q. This was after you had made final proof, though, wasn't it? A. Yes, sir.

Q. You told Mr. Jakway that you were willing to sell the timber? A. Yes, sir.

Q. Did you tell him what you were willing to sell the timber for?

A. I told him if I could sell it for enough to pay for the land—to pay for the proving up on it, why I would sell it.

Q. And he offered to do that and give you fifty dollars besides?

A. He didn't offer it, no, sir. I told him I would do that.

Q. But when you afterwards sold the timber, how did you happen to do that? When you made this deed out, how did you happen to make the deed out?

A. Jakway & Faust must have made the deed out,

(Testimony of Nels Opsata.)

because it was all ready for me when I was in town, and he handed it to me and asked me if it was all right, and I told him it was.

Q. And you received the deed for you and your wife?

A. Yes, sir.

Q. And at that time he told you how much you could get for it? A. Yes, sir.

Q. Did he tell you how much you could get for it?

A. Yes, sir.

Q. He told you he had sold it to Cobban?

A. Yes, sir. He told me he had sold it to Cobban.

Q. And that was in pursuance of the offer you had made him a few days before that time?

A. Yes, sir.

Q. The day of your final proof was September 6th, and the date of your deed was September 9th, 1899?

A. Yes, sir.

Q. Was that about the time this transaction took place?

A. I don't remember the date when I transferred the timber. I remember the date, the 6th was when I made my proof.

Q. Considerable was said in your examination in chief as to your witnesses. I suppose that you selected your witnesses from among the people who knew the land, did you not? A. Yes, sir.

Q. You knew that you had to have witnesses, when you entered the land under the Timber and Stone Act, didn't you?

(Testimony of Nels Opsata.)

A. Yes, sir, and I also knew that Mr. Stewart and Mr. Jakway had seen the land.

Q. And they were the two who came with you to make final proof? A. Mr. Louis Jakway.

Q. Mr. Louis Jakway knew the land, did he?

A. Yes, sir.

Q. And had been over it? A. He said he had.

Redirect Examination.

(By Mr. MAYNARD.)

Q. Mr. Opsata, was this money that you borrowed from Jakway when you stopped at Ovando to pay for your land—was it in currency or in a check?

A. In a check.

Q. It was in a check? A. Yes, sir.

Q. A check for four hundred dollars?

A. It was for eight hundred dollars, an eight hundred dollar check.

Q. A check for eight hundred dollars?

A. Yes, sir.

Q. Who gave you that?

A. Mr. Faust. That is of the firm of Jakway & Faust.

Q. This eight hundred dollar check; was it made to your order? A. No, I don't think it was.

Q. Who was it made to?

A. It was made to the man in the land office, I suppose. He took it as payment.

Q. You don't know who it was made payable to, do you?

(Testimony of Nels Opsata.)

By Mr. WALSH.—We object to that for the reason that the check itself is the best evidence.

A. It was made right to the receiver, I think.

Q. And when you say that the four hundred dollars was paid in a check for Stewart, that would be four hundred dollars for Stewart and four hundred dollars for you? A. Yes.

NELS O. OPSATA.

Subscribed and sworn to before me this sixteenth day of March, 1902.

HENRY N. BLAKE,
Examiner in Chancery.

By Mr. WALSH.—We now move to strike out all the testimony of the witness concerning the entry of Nels Opsata and the conveyance by him to R. M. Cobban, and from R. M. Cobban to the defendant in this case upon the ground that it appears from the deed introduced in evidence that the land never was conveyed by the entryman, and it was impossible to set aside the patent, except in a case to which the witness, Nels Opsata, is a party, he still continuing to own the land.

And upon the further ground that it appears that the land was paid for with a land warrant issued to Benjamin F. Vennum, for services in the Mexican war, as appears by the bounty land warrant, attached to and accompanying the final proof papers, the said warrant being sufficient in and of itself to entitle the applicant to a patent for the land without any regard whatever to the compliance with or noncompliance with the Timber and Stone

Act. The said warrant appearing to be duly assigned to the applicant.

At this point an adjournment was taken until Monday, March 17th, 1902, at ten o'clock A. M.

Examiner in Chancery.

In the Circuit Court of the United States, Ninth Circuit, District of Montana.

THE UNITED STATES,
vs.
WILLIAM A. CLARK.

Certificate of Master in Chancery.

To the Honorable the Judges of the Above-entitled Court:

I do hereby certify that, under the order of said court made and entered in said cause upon the first day of October, 1901, and in pursuance to the stipulations and agreements of the above-named parties, I continued to take the testimony therein, in my office in the city of Helena, in said District; that Charles H. Cooper and Charles W. Blair, heretofore appointed stenographers, took the testimony of the witnesses in shorthand and transcribed the same; that the following named persons were called as witnesses and appeared personally before me, and were duly sworn to testify to the truth, the whole truth, and nothing but the truth, to wit: John H. Cole, Vital Cyr, Allen Dodd, Albert E. Ehle, Nellie J. Ehle, William G. Glenny, George D. Greene, Elmer E. Hershey, Recy M.

(Testimony of Allen Dodd.)

Jemison, Mrs. Eunice Knight, James B. McIntosh, Henry W. McLaughlin, W. B. Parsons.

That said witnesses were examined and cross-examined by counsel for the parties, and their testimony is contained in this volume V, pages 2289-2915, inclusive; that said witnesses, with the exception of John H. Cole, Vital Cyr, William G. Glenny, James B. McIntosh and W. B. Parsons, respectively, carefully read, corrected and subscribed and verified their testimony before me, at the times hereinafter mentioned; and that under the stipulations of the parties, I certified that the testimony of the said John H. Cole, Vital Cyr, William G. Glenny, James B. McIntosh and W. B. Parsons, and also a part of the testimony of the said Albert Ehle and Nellie J. Ehle, had been correctly transcribed.

One exhibit of the complainant, No. 200, is herewith filed.

HENRY N. BLAKE,
Standing Master in Chancery, and Examiner.

Dated this second day of April, 1902.

ALLEN DODD, a witness on behalf of complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. MAYNARD.)

Q. Mr. Dodd, what is your name?

A. Allen Dodd.

Q. Where do you live?

(Testimony of Allen Dodd.)

A. I live on the Blackfoot about nine miles from the station of Bonner.

Q. How long have you lived there?

A. It will be five years this coming October since I started to build there; some time in October.

Q. What is your occupation?

A. Common laborer.

Q. Have you any family? A. No, sir.

Q. You are a bachelor? A. Yes, sir.

Q. Are you a brother of Harrison Dodd?

A. Yes, sir.

Q. Did you at any time under the Stone and Timber Act make filing and final proof on the southwest quarter of section 30, township 15 north, of range 13 west?

Mr. WALSH.—We object to that as leading and for the further reason that there is no allegation in the bill of complaint charging that the land described has been deeded to anybody, and it is wholly irrelevant and immaterial, no allegation charging any fraudulent entry or any entry at all by the witness or any conveyance of land entered by him.

Mr. MAYNARD.—I desire to say in answer to the objection of counsel on the other side that if Mr. Allen Dodd's entry is omitted from the bill of complaint it was by mistake and we shall ask that the bill of complaint be amended to embrace his entry, and the questions put to and the answers by the witness are made upon that proposition.

(Testimony of Allen Dodd.)

Mr. BICKFORD.—Our objection further is that until such amendment is made and allowed by the Court the testimony is wholly irrelevant and immaterial.

A. I made a filing but I do not remember the minutes of the claim.

Q. That is the exact description? A. Yes.

Q. Had you made a filing under the Stone and Timber Act? A. Yes.

Q. Who was with you?

A. What do you mean; at the time of the location?

Q. At the time of the filing?

A. My brother and Mr. Watson and Mr. Catlin, I think, as near as I can remember it.

Q. For whom did you make that entry?

A. For myself.

Q. But in whose interest?

A. Could not be anyone else's, only my own that I know of.

Q. When did you come to town?

A. Recently, you mean?

Q. Yes, this time.

A. I came yesterday, I do not remember just when the train is due here.

Q. You arrived here yesterday afternoon?

A. Yes, sir.

Q. You have had a talk with Mr. Cobban?

A. Yes, sir.

Q. Where did you see him?

A. I seen him on the street, saw him in here; I came

(Testimony of Allen Dodd.)

in here just when I came to town, then I saw Mr. Cobban here and then I walked up the street with him.

Q. Yesterday afternoon?

A. Yes, I guess probably the business closed here about that time.

Q. That is yesterday afternoon? A. Yes, sir.

Q. Then you were with him after this session yesterday afternoon and before supper? A. Yes, sir.

Q. Were you with him after supper?

A. Yes, sir.

Q. Been with him this morning? A. No, sir.

Q. When did you see either of these attorneys?

A. I saw this gentleman right here (indicating Mr. Bickford) when I saw Mr. Cobban in this house.

Q. Yesterday afternoon? A. Yes, in this house.

Q. How far did you say you were living from Bonner at the time you made this entry?

A. About 9 miles, well, about 8 miles from the post-office.

Q. Who are you living with?

A. My father and mother.

Q. How long have you been living with them?

A. Oh, for the past ten or eleven years.

Q. How old a man are you? A. Forty-two past.

Q. What place was it that you were living on?

A. During this time I just mentioned?

Q. Yes.

A. Oh, I have lived quite a number of places in that time.

(Testimony of Allen Dodd.)

Q. I mean at the time you were making your timber entry?

A. On this place that I filed the declaration papers to make my homestead entry on.

Q. How long before that before you made this declaration? A. Before this Timber and Stone Act?

Q. Yes.

A. I do not remember just how long it was ago since I filed on this timber claim; I know that I went there, it will be five years this coming fall in October when I first squatted on this piece of unsurveyed land.

Q. Did you at that time have any real or personal property? A. No, sir, not to speak of.

Q. Who first spoke to you about making this filing?

A. I believe it was Mr. Watson that spoke to me about it.

Q. Doc Watson? A. Marion Watson.

Q. What relation is he to you?

A. Well, my brother married his sister.

Q. Whereabouts were you when he spoke to you?

A. I was at home.

Q. That you were stopping? A. Yes, sir.

Q. Did he come there? A. Yes, sir.

Q. Who was present?

A. I don't remember, quite a number.

Q. Name as many as you can?

A. Oh, there was my father and mother and Marion Watson and my brother Harrison; I do not remember that they were all present, but I know they were around there.

(Testimony of Allen Dodd.)

Q. Did Marion Watson give the information to the number that were gathered there?

Mr. WALSH.—Objected to as irrelevant and immaterial.

A. I do not remember.

Q. It was at this time and place you heard about it? A. Yes, sir.

Q. And from what you heard at that time and place from Marion Watson was that what lead you to make this entry?

Mr. WALSH.—We object to that as leading.

A. Yes, that was the first I heard about it.

Q. How long after this before you went to see the land?

A. Oh, a week or more; I don't remember just how long.

Q. How far was this land from where you were living?

A. I don't know exactly, it must be 25 miles or 30.

Q. Who did you go with?

A. To locate this?

Q. Yes.

A. Marion Watson and myself run out the lines.

Q. Where is Marion Watson now?

A. I don't know.

Q. When did you see him last?

A. A year ago last summer, sometime; I don't remember just when he went away from the Blackfoot.

(Testimony of Allen Dodd.)

Q. Where did he go to?

A. Well, he told me he was going—no, he did not tell me anything only what I heard after he left, I heard that he was in Idaho.

Q. Did anyone else go with you and Marion at the time you made your location? A. No, sir.

Q. You say that was 25 miles from your home?

A. Yes, it was all of that if not more, I could not tell the exact number of miles.

Q. What kind of a place was it?

A. You mean where it was located?

Q. Yes.

A. Well, it was located on both sides of the river, the Blackfoot river.

Q. Your location? A. Yes.

Q. Had you ever been up there before to look at this location?

A. I had seen the land before, but I never knew anything of the lines.

Q. When you had been up there for what purpose?

A. Oh, I had been up there for different purposes, fishing and hunting.

Q. That is all the knowledge you had of the thing except what you gathered from fishing and hunting and going through there?

A. That is all before that time.

Q. How did you get up there?

A. I don't remember whether I walked up or rode up, I know how I came down?

(Testimony of Allen Dodd.)

Q. How was that? A. On a raft?

Q. Do you remember how long you stayed up there?

Q. Just you and Marion were there and no one else?

A. His wife.

Q. What was her name?

A. I think her name was Kittie Watson.

Q. Did she take up a location at this same time?

A. I don't know, I had nothing to do with it if she did.

Q. You knew nothing about it?

A. Nothing only hearsay.

Q. Well, there was nobody to hearsay from, except from herself and her husband, was there?

A. Oh, yes.

Q. Who was that?

A. All the relations on their side and mine to talk about it; I heard that she and Mr. Watson took up a claim and that is all I know about it.

Q. Can you tell without taking too long to count, how many of the relations on your side took up claims?

A. No.

Q. Nor on her side, the Watson side?

A. No, because I don't know.

Q. I mean from what you have heard them tell?

A. I don't remember.

Q. Well, there were a good many, were there not?

Mr. WALSH.—Objected to as leading, irrelevant and immaterial.

A. Oh, I expect there were several.

(Testimony of Allen Dodd.)

Q. Well, now, then, you say Kittie Watson was along, was there anybody else along.

A. I did not say she was along, I said she was there.

Q. What is the distinction?

A. Well, she was at Mr. Watson's home, where they lived at the time of this location.

Q. Was his home up there? A. Yes, sir.

Q. At the point where your location is?

A. Not more than a mile from where I located.

Q. And you saw nobody else previous to going up there in regard to this matter? A. No, sir.

Q. Did you see Mr. Griswold at any time?

A. Yes, sir.

Q. When did you first see him in connection with this location?

A. Well, I saw him shortly after I went up.

Q. Where? A. On the road.

Q. And that was after you went up to locate, you say? A. Yes.

Q. You are sure of that?

A. No, I saw him before I went to locate, I think it was the day I went up, after I talked with Watson at my place at home.

Q. After Watson stated at your house in the presence of this number of people that you have spoken of in regard to this matter, then you went and saw Griswold?

A. Then I went up there, and I believe as I was go-

(Testimony of Allen Dodd.)

ing up, if I remember right, I saw Mr. Griswold on the road.

Q. Whereabouts on the road?

A. Oh, some place between Clearwater postoffice and the place where Watson lived at that time.

Q. Do I understand that you were on your way with Watson to make this location when you saw Griswold?

A. I was on my way. I do not remember whether Watson was along or not. I know he was there at his home when I got there, and me and him went out together to make this location.

Q. Well, did you stop to see Mr. Griswold previous to your going up on the land?

Mr. WALSH.—We object to that as leading.

A. No, sir.

Q. You just happened to meet him?

A. Yes, sir.

Q. Had Watson said anything to him about the matter? A. Yes, sir.

Q. What did he say?

Mr. WALSH.—Objected to as hearsay.

A. I do not remember what he said.

Q. Was it from what Watson said to you in connection with Griswold that led you to speak to Mr. Griswold on the subject?

Mr. WALSH.—Objected to as leading.

A. Why, I guess so, I don't know whether he talked with Griswold about it or not.

(Testimony of Allen Dodd.)

Q. He had spoken to you about Mr. Griswold, you say, previous to your seeing Griswold.

Mr. WALSH.—Objected to as leading.

A. Yes, I believe he had.

Q. Well, then when you saw Griswold, what did you say to him?

A. I don't remember, we talked about this land and one thing or another.

Q. That is, you talked about this land and one thing or another, now what was that?

A. Well, he told me that if I could find a suitable place that he thought I could borrow money to prove up on it.

Q. That is what he told you?

A. That is the substance as near as I can remember.

Q. How did he come to say that to you?

A. I don't remember just how.

Q. Had you told him what you expected to do before that?

A. Yes, I had been into that business, tried to get a piece of land.

Q. Were you then on your way to try to find a piece of land? A. Yes, sir.

Q. When you had this conversation with Mr. Griswold? A. Yes.

Q. Who was present at the time?

A. I don't remember just who was, it don't seem to me there was anybody.

Q. Watson, when he was talking there to the crowd

(Testimony of Allen Dodd.)

you say were gathered at your house, did not say anything about what you could do with the land if you located?

Mr. WALSH.—Objected to as leading.

A. I did not say, did I, that this crowd was at my house, I said it was at my place on the road.

Q. How far is your place on the road from your house?

A. Well, it goes down to the road, what I claim.

Q. Now, Allen, I want to understand that, I can't quite understand you?

A. Well, that question—I saw Mr. Watson, he was passing the road when we had this talk, it was at my place, I do not remember just how many heard it, he was passing going to his home.

Q. He was going to his home? A. Yes.

Q. Where did he come from?

A. Came from Missoula.

Q. He had come from Missoula and was going home?

A. Yes.

Q. And would have to pass your place?

A. Yes.

Q. And this crowd you say were gathered not in the house but on the side of the road, is that what you say?

A. I do not remember of any crowd being there, I remember of him telling certain parties, but I know it was the general talk through all the relations that was there, I don't remember that there was a crowd right

(Testimony of Allen Dodd.)

at the road at the time; I know I was there and one or two others.

Q. Now, what was this general talk among all of the relations, that is what I want, that you got from Watson?

Mr. WALSH.—Objected to as immaterial and irrelevant.

A. I don't remember.

Q. You don't remember?

A. I don't know what you have reference to, that is there is lots of talk where there is lots of relations.

Q. Well, now, is that the best answer you can give?

(No answer.)

Q. Now, Mr. Dodd, is not this the truth, that at the time and place you have now referred to, the general talk among the relatives you have referred to was this, that each and every one of them should take up a stone and timber claim and that they could make one hundred dollars and their expenses out of it, wasn't that the talk?

Mr. WALSH.—Objected to as leading, and as immaterial, irrelevant and hearsay.

A. Well, it may have been.

Q. And then you started to make a claim for yourself?

Mr. WALSH.—Objected to as leading and repetition.

A. Yes, sir.

Q. And saw Griswold on the way?

(Testimony of Allen Dodd.)

Mr. WALSH.—Objected to as leading and repetition.

A. Yes, sir.

Q. Had you seen Mr. Cobban at this time?

A. I don't think I had at that time.

Q. How long after you made this location that you have now testified to was it before you did see Mr. Cobban?

A. I don't remember; inside of a week I should think.

Q. How long after you made this location that you have now testified to was it before you did see Mr. Cobban?

A. I don't remember now just when and where I saw Mr. Cobban after I located this claim. I met Mr. Cobban on the road after I located my claim as I was going down.

Q. Who was he with?

A. He was by himself as near as I can remember.

Q. Who were you with? A. I was by myself.

Q. Did you know him at the time? A. Yes, sir.

Q. Where did you meet him?

A. I don't remember I ever had any talk with him; I knew him by sight.

Q. Did you have any conversation with him then?

A. Yes, sir.

Q. When you were all alone by yourself you met Mr. Cobban by himself? A. Yes, sir.

Q. Up there in the mountains?

A. No, sir, not in the mountains, on the county road with his buggy.

(Testimony of Allen Dodd.)

Q. He was driving along in his buggy?

A. Yes, sir.

Q. And you were walking? A. Yes, sir.

Q. Where were you going to?

A. I was going home.

Q. Where was he going? A. I don't know.

Q. You never had had any conversation with him before in your life?

A. Not on the land business question.

Q. On what other subject?

A. I don't remember of anything, more than to bid the time of day.

Q. Where were you ever introduced to him before that?

A. Well, now I may be ahead of my story; I did have quite a little business with Mr. Cobban about some fire clay I had on my place.

Q. Well I am simply inquiring as to the fact; now, is it true, or isn't it true, that you ever had any dealings with Mr. Cobban previous to your meeting him on the road as you have stated?

A. I must have been that I was acquainted with him and had this dealing before that, but I would not have known him, that is so well; itis hard to commit to memory things like that unless a person keeps a memorandum; but I think I had these specimens of the fire clay there before I ever talked to him about the land question at his office.

(Testimony of Allen Dodd.)

Q. Well can you state as to whether it was or was not a fact that you had had this conversation?

A. Not for certain.

Q. When you said a moment ago that it was hard to commit to memory all these things what did you mean by that ?

A. Well, I meant that I could not remember for certain whether I had business with Mr. Cobban before this time I met him on the road or not, but I knew him.

Q. Have you been told to commit certain things to memory and tell them here, by anybody?

A. No, sir.

Q. Well, what conversation did you have with Cobban at the time you met him in the road as you now state?

A. Well, I told him that I had found a claim and that I could find another one, and that if he would loan me the money to prove up on them I would try to find another claim, as I went home; and he said he thought he could loan me the money to prove up, and as I went home I went down 5 or 6 miles and I stopped at Mr. Carver's place; I had plats with me, and I thought I knew of another piece of land, and I went and cruised that piece out, and then me and Mr. Carver built a raft and I went down the Blackfoot on the raft, and I took the minutes of both of these places to Mr. Cobban, and he loaned me the money to come to Helena, me and my brother; my brother took one of them and I the other.

(Testimony of Allen Dodd.)

Q. What did you say this man's name was that you came down the raft with?

A. Do you mean the man where I stopped at his place?

Q. Yes.

A. Mr. Carver.

Q. What is his first name?

A. Well, sir, I don't know.

Q. You don't know his first name? A. No, sir.

Q. Had you ever seen him before?

A. Yes, sir, occasionally.

Q. Where was he living then?

A. He was living on his homestead.

Q. Where is that?

A. Well, I should judge it is about 3 miles below the Clearwater postoffice; no, not the Clearwater postoffice; I don't think there is a postoffice there now; anyhow, the mouth of the Clearwater.

Q. How 3 miles below the mouth of the Clearwater?

A. Yes.

Q. You don't know his first name? A. No, sir.

Q. Is he living there now, do you know?

A. I don't know; I heard he had proved up and sold his claim to the Blackfoot Milling Company and gone away.

Q. And gone away?

A. I don't think he has left the country; I heard he has got mining property some place out toward Mammoth.

(Testimony of Allen Dodd.)

Q. Now, let me understand you; after you had this conversation with Mr. Cobban in the road, you had already located one claim? A. Yes, sir.

Q. With Watson? A. Yes, sir.

Q. Then, when did you locate the next claim?

A. I located the next day. I stayed all night at Mr. Carver's place and I located the next day this other claim.

Q. That night you stopped at Carver's house?

A. Yes, sir.

Q. And the next day you located this second claim?

A. Yes, sir.

Q. Who was with you?

A. Mr. Carver went out with me.

Q. How far was it from Carver's house?

A. Well, it was about a mile, I guess.

Q. Did you that same day go down the river on a raft?

A. No, I think that I went down the next day.

Q. So you were one day there with Carver.

A. Yes, as near as I can remember.

Q. And this place was how many miles from Carver's house?

A. I should judge it was not over a mile, that is the nearest portion to this piece.

Q. How far was it from your location?

A. I should judge between 9 and 10 miles.

Q. How far from your home?

A. Oh, it must be 20 miles, any way.

(Testimony of Allen Dodd.)

Q. And you and Carver went to this particular location? A. Yes, sir.

Q. How did you know about this particular location?

A. Well, I had the plats of the county or of the township.

Q. The plats of what?

A. The plats of the township.

Q. How did you know it was vacant?

A. Because the plats showed it was vacant.

Q. Who did you receive the plats from?

A. The land office.

Q. Whereabouts?

A. Well, now, I did not receive them myself; I got these plats from my brother, and he got them at the land office at—well, he had plats from both land offices; he had some from here and some from Missoula.

Q. What brother was it? A. Harrison.

Q. Harrison Dodd? A. Yes, sir.

Q. Gave you some plats that he had received, as he told you, from the Missoula and Helena land offices, is that what you mean to say?

A. Well, I had the correct plats; I don't know whether I got them from him for sure, or from Mr. Watson, to come right down to the truth.

Q. To tell the truth you say you don't know what—

A. I don't remember whether I got these plats from him or Mr. Watson.

Q. Are you able now to say as to anything about these plats, Allen?

(Testimony of Allen Dodd.)

A. All I could say is they were correct plats, and they showed the vacant lots in different townships; they were made out at the land office.

Q. These plats that weremade out at the land office that you had showed what was occupied and what was vacant? A. Yes, sir.

Q. How was that shown on the map?

A. Well, you can go to the land office and get them made out, and certain sections and townships, and whatever is taken is crossed out, and what is not is left blank; as near as I can remember these plats were, because what was taken was crossed out, and what was vacant was left blank.

Q. Are you able to swear positively that was the case?

A. I can swear positively that is the way all the plats ever I had anything to do with looked.

Q. You had no knowledge of this land at all that you went on to locate, this second location, had you, when you went there?

A. Well, I believe Mr. Watson spoke something about it, but he said he had never been on it; he did not know what it was like; of course he knew it was vacant because he had the plats.

Q. Well, then, do I understand you that you went there because Mr. Watson told you to go there?

A. No, sir, I went there because when I went home I met Mr. Cobban on the road, and I had some idea of this place, and had these plats, and knew I could go right

(Testimony of Allen Dodd.)

to it, and if it was satisfactory, why my brother would take it up if he wanted to.

Q. You have already sworn that you never went there in your life to this place before; had not been there at all up to the time you are now talking about.

Mr. WALSH.—There is no question asked now.

Q. That being so, how did you know you could go right to that particular location?

A. Easy enough.

Q. Well, how.

A. Well, I had this plat; all I had to do was to go to Mr. Carver's place; his land joined it. No, his land did not join, but he knew all the section lines there and I went to him and asked him where I could find this section corner, I do not remember now just what section this piece of land was on, but any way him and me went, and he showed me the corners, and I went and run the lines out; he went up a ways with me, the lines were plain, and any how I had a compass; it was a new survey and I could run out the lines; I went around it and through it in different directions, and then I went back to his place, and the next day went home.

Q. Are you a surveyor? A. No, sir.

Q. Have you any education to speak of?

A. No, sir.

Q. Can you sign your own name? A. Yes, sir.

Q. Having little or no education, as you say, how are you able to go to this wild state of land which you had

(Testimony of Allen Dodd.)

never seen to before, and be able to point out the subdivisions of the land?

A. Well, I have got enough so I can read the Government survey marks on the corners, and I got enough for to follow a good blazed line.

Q. What had told you of this particular description?

A. Marion Watson.

Q. And he had given you the figures then?

A. Yes.

Q. It was because of what Marion Watson had told you, and of the particular description he had given you that enabled you to go to this place?

Mr. WALSH.—Objected to as leading, not stating what the witness has testified to at all.

Q. That is the way it is, isn't it, Mr. Dodd?

A. Didn't I answer that question once?

Q. Well, what is your answer?

A. Well, yes, partly through Marion Watson that I went to this place.

Q. Well, if it was through Marion Watson or partly through him that you went to this place, that was after you had left him, and before you went to the place that you saw Mr. Cobban?

A. Yes, sir.

Q. Well, when you received this information from Mr. Watson and he had given you this data, these figures, you had not at that time seen Mr. Cobban?

A. I had the plats of this at my pocket at the time

(Testimony of Allen Dodd.)

when I met Mr. Cobban going home, and also the minutes of the claim that I had already cruised out.

Q. And you had received them from Watson?

A. Yes, he gave me a plat, that is all, of the township, I believe, and told me to go and look at this place if I wanted to; I don't think I would have went and looked at it if I had not met Mr. Cobban on the way.

Q. You don't? A. No.

Q. You had had this conversation with Watson and he pointed out the description with reference to this location before you met Cobban; now you say you don't think you would have gone there if you had not met him on the way?

A. No, because I went after I talked with him, and he agreed to loan me this money, me and my brother, and I thought it was worth while to go over and cruise that piece out.

Q. When did you next see Mr. Cobban?

A. I seen him in Missoula when we came over to make our filing.

Q. Who was with you? A. My brother.

Q. What is his name? A. Winfield.

Q. Had you seen Mr. Cobban between the time of your meeting him alone on the highway and your meeting him in Missoula? A. I don't think so.

Q. Had you seen Mr. Marion Watson again?

A. Before I seen Mr. Cobban?

Q. No, after you had seen Mr. Cobban alone on the highway?

A. I must have seen Mr. Watson, because he was a wit-

(Testimony of Allen Dodd.)

ness for me, he must have come down and we went together to Missoula.

Q. At the time you went to file? A. Yes, sir.

Q. Well, is that the only knowledge that you have as to whether or not you met Mr. Watson, because he was a witness for you?

A. I believe that is the talk, the only talk we ever had, that is, that he was to come down and go to the land office with me.

Q. When? A. Well, at the time we went to file.

Q. Was it the time you went to file or the time you went to prove up?

A. I filed and proved up the same day.

Q. You filed and proved up the same day?

A. Oh, no, excuse me; I got mixed; that would not be reasonable.

Q. You are a little off on that, are you not?

A. Yes, sir, quite a few days.

Q. Well, now you say you must have seen Watson because he told you he would be a witness for you; what do you mean by that?

A. I mean that he was to come down on a certain day and go with us to the land office, the last time I seen him.

Q. What land office?

A. Why, the land office in Helena.

Q. When was he to go with you to the land office in Helena?

A. I don't remember just what day we were to start.

Friday afternoon, March 14th, 1902.

ALLEN DODD, a witness for the complainant, was recalled to the stand and examined further as follows:

Direct Examination.

(By Mr. MAYNARD.)

Q. The last question that I put to you, Allen, before the adjournment was when Marion Watson was to go with you to the land office; you seem to be in a little doubt in regard to that subject.

A. Well, I was; I didn't know just the date. I knew he was to go when I went.

Q. What do you mean by that?

A. Well, I mean that he was to—that he calculated to be one of my witnesses.

Q. Well, do you know whether he was or was not?

A. A witness?

Q. Yes, a witness for you? A. I do.

Q. Was he? A. Yes, sir, he was.

Q. Was he here in Helena? A. Was he here?

Q. Yes. A. Yes, he was here.

Q. How many times was he here with you?

A. I guess only the once.

Q. When was that?

A. At the time of the—I don't know when it was he was with us; whether at the time of the filing, or when I proved up. A person wouldn't require a witness, would they, at the time of filing?

Q. Well, I was asking you the questions, Allen; you are on the witness stand; I am not.

(Testimony of Allen Dodd.)

By Judge BICKFORD.—I will state for the benefit of the witness that a person does not require a witness at the time of filing, and they never have required witnesses at the time of the filing, and only require them when the final proof is made.

A. It has been so long ago and I don't remember, and it is hard for me to recall it and you will have to excuse me. Well, that was at the time of proving up, the witnesses was in here then.

Q. When you said this other party—

A. It has been a blank for me, and I cannot recall it. I don't remember about that.

Q. Now, when you said it has been a long time, and it is a blank to you, what do you mean by that?

A. Well, I mean that I thought I would never have to recall anything that transpired when I took this claim, afterwards.

Q. So that the whole transaction from beginning to end is a blank to you?

A. No, not the whole transaction, just certain parts of it that I might not name just proper.

Q. Well, I want to have you refresh your memory now and tell me when it was that you saw Mr. Cobban the next time after you met him alone up in the mountains on that highway. A. That was in Missoula.

Q. Whereabouts? A. At his office there.

Q. That was the very next time that you saw him?

A. Yes, as near as I can remember.

Q. Well, have you any recollection of any kind of hav-

(Testimony of Allen Dodd.)

ing seen him between those two times? A. No, sir.

Q. And you went with Winfield Dodd, didn't you?

By Mr. BICKFORD.—We object to that as being leading.

A. Yes, he was with me.

Q. Who else was with you when you went to the office?

A. When I went to the office?

Q. Yes. A. I guess that is all.

Q. Just you two? A. Yes.

Q. Where did you meet Winfield to start from Missoula? A. At my place.

Q. How far does he live from your place?

A. He was staying with me at that time.

Q. Where is Winfield now?

A. He was over in Idaho the last I heard from him.

Q. Is he older or younger than you are?

A. He is older.

Q. How much?

A. Oh, a couple of years or such a matter.

Q. Is he married? A. No, sir.

Q. How long had he been living with you?

A. Oh, he first made his home there—he has made his home there off and on ever since I took up that place until last fall when he went to Idaho. He has been there during the winter.

Q. What?

A. Last fall he went to Idaho and he has been there during the winter.

Q. Whereabouts in Idaho?

(Testimony of Allen Dodd.)

A. McKay is his address.

Q. What? A. McKay is his postoffice address.

Q. McKay? A. Yes, sir.

Q. How many of the Dodds are down there?

A. Two.

Q. Who is the other one? A. Harrison.

Q. What relation is he to you? A. A brother.

Q. Another brother; what are they doing down there?

A. Well, they have been getting out ties for an electric road that is to be run to the mines, so they write me.

By Mr. BICKFORD.—We move to strike out the answer of the witness to the last question asked by counsel for the reason that it is irrelevant and immaterial and has no bearing on the issues in this case.

Q. What had Winfield been doing with you before you took up this claim?

By Mr. BICKFORD.—That is also objected to for the reason that it is irrelevant and immaterial to the issues in this case.

A. Oh, he worked as a common laborer.

Q. At anything he could find to do? A. Yes, sir.

Q. And how long did you say that he had been working around there as a common laborer with you, how many years?

By Mr. BICKFORD.—We object to that for the reason that it is irrelevant and immaterial and has nothing whatever to do with the issues in this case.

A. Oh, I don't remember.

(Testimony of Allen Dodd.)

Q. Don't remember; five years?

By Mr. BICKFORD.—We object to that for the reason that it is irrelevant and immaterial and has nothing whatever to do with any of the matters in issue in this case.

A. He was there off and on during the period that I lived there. Not all the time. Sometimes he would be away a year.

Q. How long after you returned home did you and Winfield start for Missoula?

A. Oh, it wasn't long—perhaps a week, maybe not so long.

Q. Maybe not a week?

A. Maybe not a week, yes, sir.

Q. You know it wasn't more than a week?

A. No, sir.

Q. What do you mean by that?

A. That is as near as I can answer that question. That it was perhaps a week.

Q. And you two went off together?

A. It might have been more or might have been less, I don't remember.

Q. Do you know where Winfield was during the time after you returned, and before he went to Missoula?

A. No, sir, not all the time.

Q. Was he living with you?

A. He was making his home there, yes.

Q. Working around, was he?

By Mr. BICKFORD.—We object to that as leading.

(Testimony of Allen Dodd.)

A. Yes.

Q. What?

A. I suppose so, I don't know just what he was doing.

Q. Do you know where he slept?

A. Yes, he slept in my house while he was there.

Q. Well, was he away during the time that you know of? A. Yes, sir.

Q. From the time that you returned to the time that he went to Missoula?

By. Mr. BICKFORD.—We object to that as leading.

A. I don't remember.

Q. You don't remember whether he was away or not?

A. No, sir.

Q. What time did you go to Cobban's office?

A. I don't remember that.

Q. Had you ever been there before? A. Yes, sir.

Q. When had you been there before?

A. I don't remember that either.

Q. What did you go there for?

By Mr. BICKFORD.—We object to that as leading, and further upon the ground that it is irrelevant and immaterial.

A. Well, as near as I can remember it was on this clay business that I was speaking about.

Q. As near as you can recollect? A. Yes, sir.

Q. But when that was you don't know?

A. No, sir, I don't remember no dates.

Q. Who did you see in Cobban's office?

(Testimony of Allen Dodd.)

By Mr. BICKFORD.—We object to that as being leading in the first place, and further, that it is irrelevant and immaterial.

A. I seen quite a few strangers there.

Q. Well, can you name any of them?

A. Well, Mr. Catlin and Mr. Pound was his name.

Q. Have you seen Catlin and Pound before that date? A. I don't remember whether I had or not.

Q. What did you go there for?

A. As near as I can remember it was to see about this clay business.

Q. To see about this clay business?

A. Yes, sir.

Q. When you and Winfield went down there?

A. Oh, no, when I went there it was to see about this timber. I went to see about getting the loan of this money for the claim.

Q. Who did you see? A. I seen Mr. Cobban.

Q. What did you say to him?

A. I don't just remember how I worded it. I know that was my business there.

Q. Your business was what?

A. To see about borrowing money to file on these claims.

Q. Can you remember anything that you said while you were there? A. No.

Q. Cannot remember anything?

A. Not that I could state correctly.

Q. Can you remember anything that was done?

(Testimony of Allen Dodd.)

A. Yes.

Q. What was done?

A. Well, he loaned us the money to operate on these claims with.

Q. What do you mean by that?

A. I mean by that to file and prove up on the claims.

Q. This was while you were on your way to Helena the first time, was it?

A. Why, that was the first—the first time that he loaned me money.

Q. Well, you and Winfield were in Missoula on your way to Helena, then?

A. Yes, I think that is right.

Q. He gave you the money, then, to prove up and pay for your land? A. He loaned me the money, yes.

Q. He did, how much did he loan you at that time?

A. I don't remember just how much he did loan me. I know he loaned me the necessary sum for what it would cost.

Q. For what it would cost?

A. Well, for filing with, that is what I have reference to.

Q. I am asking you what was done. Did he, or did he not at that time give you money to pay for the land?

A. To pay for the land?

Q. Yes.

A. No, he didn't right in Missoula.

Q. Where did he give you the money to pay for the land?

(Testimony of Allen Dodd.)

A. I think it was Mr. Catlin, his agent, that gave me the money here in Helena.

Q. The day you proved up? A. Yes.

Q. And gave Winfield the same?

A. I presume so.

Q. Now, I am asking you, sir, as to what took place in Mr. Cobban's office at the time fixed by you when you was on your way to Helena, to file when you were with Winfield?

A. Really, I don't remember just exactly what took place.

Q. You don't remember just exactly what took place?

A. No.

Q. Can you remember anything about it at all, Allen?

A. Well, some certain things I can remember.

Q. Well, some certain things that you do remember, give us those, will you?

A. I have, all that I can remember now.

Q. Well, you stated quite a piece back that he gave you money to operate this deal and to prove up and pay for it, as I understood you. Now, what I really want to know is, what did he do?

A. Well, that is all I can say. He just loaned me the money, that is all.

Q. At that time? A. Yes.

Q. Well, how much money did he loan you?

A. Well, I don't remember, I am sure; I know it was the necessary sum.

Q. The necessary sum for what?

(Testimony of Allen Dodd.)

A. To file at the time of the filing, and just the same at the time of proving up, but I don't know what the sum was there at the time. I couldn't name the exact number of dollars.

Q. Well, if you can't remember the exact number of dollars, can you remember the exact, or can you name anything as to the amount of dollars?

A. I don't believe I could. That is, to come any way near it.

Q. Well, now, when we were— In that we may not be mistaken and misunderstand each other, I will ask you again, for what purpose did you and Winfield Dodd, on your reaching Missoula, at the time you left your home for the purpose of filing here in Helena, stop at Mr. Cobban's office?

By Mr. BICKFORD.—We object to that for the reason that the witness has already answered the question, and has stated that he has told counsel all that he remembers concerning the transaction, and this is a mere repetition of the former questions asked by counsel of the witness.

By the EXAMINER.—You may answer the question.

A. As near as I can remember, I have answered it. I cannot say any more on that question.

Q. Well, I just simply wanted to ask you enough questions so that I will know myself what the facts are, that is all. Now, what I want to know is, did you receive any money from Mr. Cobban at that time?

By Mr. BICKFORD.—We object to that for the witness has already stated that he received whatever money was

(Testimony of Allen Dodd.)

necessary in order to make his filing, and this is a mere repetition of the question already asked by counsel of the witness, and answered by him.

A. Yes, sir, I received the money, but I don't know how much. I know it wasn't any more than was necessary for—

Q. What was necessary for what?

A. For to do my filing, and to do my proving up.

Q. You mean by your proving up—you don't just understand that, do you? Proving up would come sixty days after your filing? A. Yes, sir.

Q. Well, do you mean that you received money only for filing, or do you mean you received money enough for both purposes at that time? A. No, sir.

Q. You don't mean that you received money enough for both purposes? A. No, sir.

Q. Then you mean that you just received money enough for the purpose of filing your first paper?

By Mr. BICKFORD.—We object to that for the reason that the witness has already so testified.

Q. Is that what you mean?

By Mr. BICKFORD.—We object to that for the reason that the witness has already so testified.

A. Yes, that is what I mean. I mean—

Q. Well, who came with you and Winfield from Missoula to Helena? A. Mr. Catlin, I think.

Q. Oh, Mr. Catlin came with you. Now, don't mistake the dates. I am asking you about the first time you came to Helena for the purpose of filing on the land.

(Testimony of Allen Dodd.)

A. Then it is wrong again.

Q. I don't want to mislead you, and when I see you are mistaken I want to tell you so. I am asking when you first came to this town on this business.

A. For my witnesses?

Q. No, I am not asking about your witnesses. I didn't say anything about your witnesses. I am asking you who came with you, if anybody, besides Winfield?

A. Well, it was either Mr. Catlin or Mr. Pound. I don't remember which.

Q. Well, did Mr. Catlin come with you when you came here the second time? A. Yes, I think he did.

Q. Did Mr. Catlin come with you and Winfield on both occasions of your coming to Helena on this business?

A. Excuse me, I would like to—it only requires two witnesses, don't it?

By Mr. BICKFORD.—That is all, two witnesses.

(Witness continuing:) Well, then, I don't think they came on the first—either Mr. Catlin or Mr. Pound, the first time I came. I think I had two witnesses. My brother was a witness, and Mr. Watson?

Q. Mr. who? A. Mr. Watson.

Q. Well, they wouldn't come until they were required as witnesses, would they, Allen?

By Mr. BICKFORD.—We object to the question upon the ground that it calls for a conclusion from the witness, and not a fact.

Q. Allen, let me ask you, do you recollect when you came here the first time?

(Testimony of Allen Dodd.)

A. Yes, I remember of coming, but I don't know anything about the dates, or anything.

Q. Well, very well, I am calling your attention to the time of your first coming here. Now, don't misunderstand me. I want you to understand me. Now, what I am asking you is, who came with you and Winfield the first time you came to Helena on this business?

A. Well, sir, I don't remember for sure whether there was anyone except my brother and Mr. Watson, or not.

Q. Well, did Mr. Watson come, too?

A. No, he didn't—the first time you mean?

Q. Do you understand the question. You are taking up a lot of time, Mr. Dodd?

A. Well, no, I don't understand the question.

By Mr. BICKFORD.—Well, there is no question pending. You needn't put that down at all. The question pending was, whether Mr. Watson came here the first time or not. He answered the question propounded, the question of counsel, and the question propounded demanded an answer, and he was proceeding to say it.

Q. I ask you again the question as to whether or not you have any recollection as to when Marion Watson came to Helena with you?

By Mr. BICKFORD.—We object to that for the reason that the witness has already answered that question.

A. The only time was when I proved up that I have any recollection of.

Q. When you proved up? A. Yes, sir.

(Testimony of Allen Dodd.)

Q. Do you understand what I mean when I say you proved up?

A. Well, don't a person have to have witnesses when they prove up?

Q. Yes. Was that the time?

A. Yes, that is the time, because he was only here the once that I have any recollection of.

Q. Well, if he came when you proved up, did you and Winfield come alone when you came to file?

A. He came with us, yes. We came alone if we didn't require no witnesses when we came to file.

Q. Well, outside of what the loan requires, you have no recollection of your own as to when he did come, is that it?

A. I know he was a witness when we proved up.

Q. You have no recollection of his being here but once?

A. No, sir.

Q. Have you any recollection as to what you did after you left for Missoula to come here for the purpose of filing?

A. I came here and filed and went straight back home, that is all.

Q. What papers did you bring with you?

A. I don't know what the contents of the papers was?

Q. You didn't know the contents of the paper that you had? A. No.

Q. Did you know at the time? A. No.

Q. Who gave you the papers?

By Mr. BICKFORD.—We object to that as being irrelevant and immaterial, and not the best of evidence.

(Testimony of Allen Dodd.)

Q. Answer the question, please?

A. I don't know what papers I had, what I required. I don't remember, for to make this filing.

Q. What did you say?

A. I have a faint recollection that we had to have a copy of the advertising, I think, or something like that, is all I remember anything about.

Q. Well, who gave you these papers?

A. Well, if anybody did, Mr. Cobban did.

Q. Well, you left a paper in the land office, did you not? A. I don't remember.

Q. You have no recollection of that?

A. No, I ain't.

Q. You have no recollection of anything that took place while you were here, while you were here in Helena?

By Mr. BICKFORD.—We object to that as not being the testimony of the witness, but a statement of counsel, and further, because it is leading.

Q. Is that it?

By Mr. BICKFORD.—We object to that for the reason that it is not testimony given by the witness, but it a statement of counsel, and further, it is leading.

A. Why, I remember of being here and making out my papers, and so on.

Q. Making out papers, who made them out for you?

A. The officers at the land office.

Q. You remember that? A. Yes.

Q. If they made them out do you know how they were able to make them out? A. No.

(Testimony of Allen Dodd.)

Q. You don't know? A. No.

Q. They inserted in the statement that you filed there, the description of the land, did they?

By Mr. BICKFORD.—We object to that as leading.

A. Yes, sir.

Q. Do you know how they got that description?

A. Why, I believe that I furnished it.

Q. Well, who gave it to you?

A. I guess Mr. Cobban.

Q. And he gave you the names of the witnesses, too,

A. Yes. Well, I knew the names of them.

Q. Well, do you know them now?

A. I would know them if I heard their names.

Q. Just because you have seen them printed in the papers? A. Yes, sir.

Q. Would you know them in any other way?

A. Know them in any other way?

Q. Yes. A. I cannot comprehend.

Q. What you know—would you know that they were your witnesses except for the fact that you had seen their names in publication? A. Yes.

Q. How?

A. Well, I know that they furnished—that they was there.

Q. Who was there?

A. Marion Watson and my brother.

Q. On your description?

A. Yes, they was with me when I proved up.

(Testimony of Allen Dodd.)

Q. But, aside from that fact you have no recollection of any other witnesses have you? A. No.

Q. You wouldn't know what witnesses to give, would you, to your land?

By Mr. BICKFORD.—We object to that as being leading.

A. All as I would give would be those two.

Q. And why would you give your brother?

By Mr. BICKFORD.—We object to this because the witness has already stated why he would give the name of his brother.

A. Because he acted as a witness.

Q. Have you any other reason than the simple fact that he acted as a witness? A. No.

Q. Well, now, Allen, isn't it true that Mr. Cobban, when he gave you the description of the land that you was to give to the officer of the land office at Helena, also gave you the names of the witnesses?

By Mr. BICKFORD.—We object to that as leading.

A. Well, he might have, but I don't remember it if he did.

Q. This paper which he gave you and which you gave to the register of the land office, your paper was filled out and you signed it and came back?

By Mr. BICKFORD.—We object to that because the witness has not testified that Cobban gave him the paper that he gave to the officer of the land office.

By Mr. MAYNARD.—He has so testified.

(Testimony of Allen Dodd.)

By Mr. BICKFORD.—That is a difference of opinion that is all.

Q. Now, I will ask you again, is it true or is it not true that Mr. Cobban gave you the paper with the description of the land on?

A. Well, I don't remember for certain what papers I did have. It is likely he did, or someone, because I don't remember it.

Q. You couldn't remember the description, you say?

A. Yes.

Q. Is that what you say?

A. Yes, I could remember the description all right at that time.

Q. Well, can you remember the description now?

A. No, sir.

Q. Can you remember anything about the description?

A. Yes, I can state what section and what part of the section but I cannot state the range.

Q. Well, just give us what you can remember.

A. Oh, it was the southwest quarter of section 30. I don't remember whether it was a full quarter section though, but it was in that part of the section.

Q. Can you remember the township or the range?

A. No, I cannot remember the township—17, I believe, was the range, 17 west.

Q. Did you pay any money into the land office?

A. I did not.

Q. Did anybody for you?

(Testimony of Allen Dodd.)

A. Mr. Cobban's agent did.

Q. How much did he pay in? A. I don't know.

Q. Who was Mr. Cobban's agent?

A. I think it was Mr. Catlin.

Q. You don't know how much he paid in for you?

A. No, but he agreed to loan me the sum to prove up.

Q. I am asking you now, sir, not what Mr. Catlin paid in, at the time you proved up, but at the time that you filed, whether you remember that you paid in any money then or not.

By Mr. BICKFORD.—We object to that for the reason that counsel for the Government has manifestly asked the question what money was paid in at the time of the final proof, and with the evident purpose of confusing the witness with this question so as to make it appear that this certain money was paid in at the filing when it is clear to counsel that no money was paid in when the filing was made.

By Mr. MAYNARD.—I can see that you are trying to inform your witness.

A. Well, Mr. Cobban—I borrowed the money from Mr. Cobban at the time of the filing, and if I remember right I paid it myself.

Q. How much did you pay?

A. I don't remember.

Q. You don't remember? A. No, sir.

Q. Who did you pay it to? A. I don't know.

(Testimony of Allen Dodd.)

Q. You don't know? Whereabouts was you when you paid it? A. In the land office.

Q. You don't know who you paid it to in the land office or how much you paid? A. No.

Q. Was it a dollar? A. No.

Q. Was it less than a dollar?

A. More than that, must have been.

Q. More than five?

A. I don't remember just what the sum was.

Q. Are you able to say that it was more or less than five dollars?

A. I couldn't say. I don't know the amount.

Q. But you are sure that you paid some money at the time that you filed?

By Mr. BICKFORD.—We object to that for the reason that it is not a proper way for counsel to examine the witness. It is an attempt on his part to cross-examine his own witness and the witness has already stated that he does not know the amount.

A. Yes, sir.

Q. Who did you get that money from?

By Mr. BICKFORD.—We object to that for the reason that the witness has already fully answered the question.

A. I borrowed it from Mr. Cobban.

Q. You borrowed the money from him before you came to Helena the first time to pay it into the land office? A. Yes, sir.

Q. How much did you borrow from him?

(Testimony of Allen Dodd.)

A. I don't remember.

Q. Have you no recollection at all on the subject?

A. No, nothing in regard to the amount of money that I borrowed.

Q. You cannot say whether it was ten or twenty, or thirty, or forty or fifty or sixty or seventy dollars that you paid in?

By Mr. BICKFORD.—We object to the manner of counsel in examining the witness for the reason that it is an effort on the part of counsel to cross-examine his own witness, and it is manifestly improper under the circumstances.

A. I can't come anywhere near it.

Q. Well, you never borrowed any money from Mr. Cobban before, did you? A. No, sir.

Q. Did you ever borrow any money from him since?

By Mr. BICKFORD.—That is also objected to by the defendant for the reason that it is irrelevant and immaterial to the issues in this case.

A. No, sir.

Q. And that is the only time in your life that you ever borrowed money of Mr. Cobban, and you come here and swear that you have no recollection of how much you borrowed of him?

By Mr. BICKFORD.—We object to that as being leading in the first place, and in the next place as an attempt on the part of counsel for the Government to cross-examine his own witness, and also that it is irrelevant and

(Testimony of Allen Dodd.)

immaterial and not responsive to any of the issues made in the case.

Q. Is that what you swear to?

By Mr. BICKFORD.—We object to that as being leading in the first place, and in the next place as an attempt on the part of counsel for the Government to cross-examine his own witness, and also that it is irrelevant and immaterial and not responsive to any of the issues made in the case. A. Yes, sir.

Q. Well, now, can you give any reason to me why you can come here and swear that you have no recollection whatever as to the amount of money that you raised from Mr. Cobban that day?

By Mr. BICKFORD.—We object to that as being leading in the first place, and in the next place as an attempt on the part of counsel for the Government to cross-examine his own witness, and also that it is irrelevant and immaterial and not responsive to any of the issues made in the case.

A. Yes, sir.

Q. What is the reason?

Mr. BICKFORD.—We object to that as being leading in the first place, and in the next place as an attempt on the part of counsel for the Government to cross-examine his own witness, and also that it is irrelevant and immaterial and not responsive to any of the issues made in the case.

A. Because I had no idea that I would ever have to

(Testimony of Allen Dodd.)

remember anything about the transaction of borrowing that money, and if I didn't have to remember those transactions I didn't have to make any memorandum of them or commit it to memory at the time, and things like that slipped my memory and it is blank to me afterwards.

Q. Have you any recollection of ever having borrowed any money from anybody else in your life?

By Mr. BICKFORD.—We object to that for the reason that it is wholly irrelevant and immaterial and not responsive to any of the issues in this case.

A. Yes, I believe I borrowed a dollar once.

Q. You borrowed a dollar once?

By Mr. BICKFORD.—We move to strike out the testimony of the witness relative to the matter of his borrowing money at the time last mentioned for the reason that it is irrelevant and immaterial and not responsive to any of the issues in this case.

A. Yes.

Q. You borrowed a dollar once, you say?

A. Yes.

Q. Who from?

By Mr. BICKFORD.—To all of this we object as being irrelevant and immaterial, and not responsive to any of the issues made by the pleadings in this case, and we appeal to the court, and say that there is no necessity of encumbering this record in this manner. It is simply increasing the expense and lengthening the time for

(Testimony of Allen Dodd.)

this investigation and it can possibly serve no useful purpose whatever in the determination of this case.

By Mr. MAYNARD.—These questions are asked, if your Honor please, for the purpose of testing the credibility of the witness.

By Mr. BICKFORD.—To which we reply that the counsel for the Government has no right whatever to test the credibility of his own witness.

By Mr. MAYNARD.—And my answer to that is, that this witness is an adverse witness, and that everyone of these witnesses are adverse witnesses and nearly every one of them are under indictment for perjury and I treat them and regard them as adverse witnesses, and treat them upon that theory, and their answers and their demeanor upon the witness-stand shows that they are adverse witnesses.

By Mr. BICKFORD.—To which the defendant replies that the cross-examination of a witness upon an immaterial matter done for the purpose of testing his credibility is never allowed under the rules of evidence and that the witness by his answer, and by his responses to the questions asked by counsel does not show his disposition to be an adverse witness at all, but that he answers fully and fairly every question where he remembers what answer to make.

By Mr. MAYNARD.—The answer to that is that he has kept me here for hours in trying to get answers to my questions.

(Testimony of Allen Dodd.)

Q. From whom and when was that?

A. From a man in Missoula. I don't know just when, but about a year ago, I think.

Q. Oh, you know that you borrowed one dollar from him? A. Yes, sir.

Q. Now, why is it, Allen, you are able to swear that you borrowed one dollar from that man a year ago, and are unable to swear whether you borrowed this one dollar or two dollars, or whatever it was, from Mr. Cobban?

By Mr. BICKFORD.—We object to that for the reason that it irrelevant and immaterial, and not responsive to any issues made by the pleading in this case, and is an attempt on the part of counsel for the Government to cross-examine his own witness, which, under the circumstances, is not permissible.

A. It is easier to remember the sum of one dollar than it is dollars and cents to me.

Q. That is the best answer that you can give to that question?

By Mr. BICKFORD.—We object to that because it is not calling for an answer from the witness, and the witness is presumed to have given the best answer that he could.

Q. Well, now, Mr. Dodd, have you any recollection of what you did between the time that you filed, and the time that you came over here to prove up?

A. No, sir; I have not.

Q. Where were you?

A. I was some place around home.

(Testimony of Allen Dodd.)

Q. Have you any recollection as to who came with you at the time you proved up?

By Mr. BICKFORD.—We object to that for the reason that the witness has already answered the question.

A. If I remember right, it was Mr. Catlin, my brother and Marion Watson.

Q. And at that time you say that Mr. Catlin, who was working for Mr. Cobban, paid the money into the land office for your claim?

By Mr. BICKFORD.—That is also objected to as being entirely irrelevant and immaterial and not responsive to any of the issues made by the pleadings in this case.

A. I think he did.

Q. Was Winfield along with you? A. Yes, sir.

Q. And was the same thing done for him?

By Mr. BICKFORD.—We object to that as being irrelevant and immaterial to the issues in this case, and not being in any way responsive to any of the questions raised by the bill of complaint herein.

A. I don't know.

Q. Well, you have no knowledge of his paying any money for you?

By Mr. BICKFORD.—We object to that also upon the ground that it is irrelevant and immaterial to the issues in this case. A. No.

Q. And that was on the 16th day of November, 1899?

By Mr. BICKFORD.—We move to strike out the state-

(Testimony of Allen Dodd.)

ment of counsel, for the reason that it is not a question put to the witness, requiring an answer.

Q. Do you remember of your selling your land after you made your final proofs on that day, Mr. Dodd?

A. I don't remember no facts about it. I remember I sold it that day.

Q. But you don't remember no facts about it?

A. No.

Q. Who did you sell to?

A. I think it was Mr. Cobban's agent.

Q. You think it was Mr. Cobban's agent that you sold to? A. Yes, sir.

Q. You don't know who you sold to, do you?

A. Well, that is as near as I can come to it.

Q. As near as you can come to it? A. Yes, sir.

Q. Have you any recollection as to how much money you got for it? A. Yes.

Q. You remember that, then, how much was it?

A. A hundred dollars.

Q. Who paid you that hundred dollars?

A. I think it was Mr. Catlin.

Q. Whereabouts was you when he paid you?

By Mr. BICKFORD.—We object to that for the reason that is irrelevant and immaterial, and not responsive to any issue made by the pleadings in this case.

A. I think it was in Helena some where.

Q. Who was present?

A. My brother was present.

Q. Your brother Winfield? A. Yes.

(Testimony of Allen Dodd.)

Q. Who else?

A. There were some strangers there.

Q. Whereabouts were you?

A. I don't remember just where that was, whether in town or in some building here.

Q. Was your hundred dollars in dollars?

A. It was in a check.

Q. Do you remember on what bank it was?

A. No, sir.

Q. You don't remember? Do you remember of going to cash it?

By Mr. BICKFORD.—We object to that as being irrelevant and immaterial.

A. Yes, sir.

Q. Where did you get it? A. In Missoula.

Q. Did Winfield get a check, too.

By Mr. BICKFORD.—We object to that as being irrelevant and immaterial.

A. I don't know. I suppose he did.

Q. What makes you suppose that he did?

By Mr. BICKFORD.—We object to that upon the ground that it is a statement of counsel stating his suppositions, and not a question put to the witness.

A. I didn't see him get a check, but I seen him have one afterwards, and that makes me suppose he got one.

Q. How long afterwards?

A. Well, not long; maybe, ten or fifteen minutes.

Q. Ten or fifteen minutes; did he get his check cashed at the same time you did?

(Testimony of Allen Dodd.)

By Mr. BICKFORD.—Objected to as irrelevant and immaterial.

A. No, sir.

Q. Do you remember when you did get it cashed?

By Mr. BICKFORD.—We object to that upon the ground that it is irrelevant and immaterial.

A. I don't know.

Q. You say you saw that check ten or fifteen minutes after you got yours? A. I didn't read it though.

Q. You didn't read it?

A. No, sir; I didn't read it.

Q. Didn't he tell you how much it was for?

By Mr. BICKFORD.—We object to that for the reason that it calls for hearsay testimony, and further upon the ground that it is irrelevant and immaterial.

A. Yes, he told me how much it was.

Q. Did he tell you how much it was for?

By Mr. BICKFORD.—We move to strike out the statement of counsel for the reason that it is irrelevant and immaterial and hearsay.

A. A hundred dollars.

Q. Who paid your expenses in coming up here to Helena when Catlin came with you?

By Mr. BICKFORD.—We object to that also for the reason that it is irrelevant and immaterial.

A. Why, I borrowed the money from Catlin; I don't remember which.

Q. When you came with Mr. Catlin?

(Testimony of Allen Dodd.)

A. Yes; when I came with him.

Q. You came on the same train with him, did you not? A. I think so; I think I did.

Q. Didn't he pay you for the railroad fare?

By Mr. BICKFORD.—We object to that as being leading.

A. I don't remember whether I borrowed the money or he paid the fare.

Q. You don't remember that?

A. No, I don't remember that.

Q. Well, do you remember whether—how you came the first time, or who paid the railroad fares?

By Mr. BICKFORD.—We object to that upon the ground that it is irrelevant and immaterial to the issues in this case.

A. Yes, I borrowed the money from Mr. Cobban.

Q. You borrowed the money from Mr. Cobban to pay the railroad fare?

A. Yes, and to pay for my filing, too.

Q. Well, now, you are beginning to have some recollection as to how much money you borrowed from Mr. Cobban.

By Mr. BICKFORD.—We move to strike out the remark of counsel for the reason that the testimony of the witness is the same now as that given heretofore upon direct examination.

Q. What is that Allen? A. No, sir.

Q. Why, if you borrowed the money to pay your railroad fare from Missoula to Helena and back, why you

(Testimony of Allen Dodd.)

would know, would you not, that you would have to have more than one dollar, don't you?

By Mr. BICKFORD.—We object to the question propounded by counsel to the witness for the reason that it is argumentative.

A. Yes, sir.

Q. You paid Winfield's fare, didn't you?

By Mr. BICKFORD.—We object to that as being leading.

A. I don't remember whether I did or not.

Q. You wouldn't say but what you did?

By Mr. BICKFORD.—We object to that as leading.

A. I wouldn't say that I did or did not.

Q. The deed which Mr. Dodd says that he executed and delivered, he thinks, to Mr. Catlin, reads as follows: "This indenture made this sixteenth day of November, A. D. one thousand eight hundred and ninety-nine between Allen Dodd, an unmarried man of Bonner, Missoula County, State of Montana, the party of the first part, and Robert M. Cobban of Missoula, Missoula County, State of Montana, the party of the second part—

Witnesseth, that the said party of the first part, for and in consideration of five hundred dollars, lawful money of the United States of America, to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, does by these presents grant, bargain, sell, etc., the hereinafter described real estate situated in Deer Lodge County, State of Montana,

(Testimony of Allen Dodd.)

described as follows: Lot one and two and the east half of the southwest quarter of section 30, township 15, north of range 13 west, consisting of a hundred and sixty acres, more or less, in the said county of Deer Lodge, State of Montana."

That deed was acknowledged in this city of Helena, on the same date, as follows:

"State of Montana,
County of Lewis & Clarke. } ss.

On this 16th day of November, A. D. eighteen hundred and ninety-nine, before me, the undersigned, L. W. Heath, a notary public in and for said county, and State, personally appeared Allen Dodd, an unmarried man, whose name is subscribed to the foregoing instrument as party thereto, and personally known to me to be the person described in and who executed the said instrument as party thereto, and who acknowledged to me that he executed the same.

L. W. HEATH,

Notary Public in and for Lewis & Clarke County, State of Montana."

Q. Do you know who this L. W. Heath is?

A. No, sir.

Q. Who took you there?

By Mr. BICKFORD.—We object to the cross-examination of this witness by counsel for the Government with reference to his knowledge concerning the notary public, because in so doing it contradicts the written testimony

(Testimony of Allen Dodd.)

already introduced by counsel; and it is irrelevant and immaterial, and does not prove or tend to prove any issues raised in this case.

A. I don't remember.

Q. Was Mr. Catlin there?

By Mr. BICKFORD.—Objected to as leading.

A. I think he was; I ain't sure.

Q. Well, because he came here, and paid your money into the land office and gave you the hundred dollars and was with you, whether at the notary public's office or not, is that the reason you swear you think you deeded it to him?

By Mr. BICKFORD.—We object to the cross-examination of the witness by counsel for the reason that he is not permitted to cross-examine his own witness, and we also object to the question as leading.

A. Yes.

Q. Well, did you ever find out that you was mistaken when you thought that you had deeded it to Mr. Catlin?

A. No, sir.

Q. And you don't know that you did ever deed it to Mr. Catlin? A. No, I don't know.

Cross-examination.

By Mr. BICKFORD.—Before the cross-examination of this witness we interpose the following motion: We move to strike out all of the testimony of the foregoing witness relating to either the entry of his land or the final proof upon his land or the transfer of the land to

(Testimony of Allen Dodd.)

some other person, and the deed with reference to the transfer thereof for the reason that the same is irrelevant and immaterial and not responsive to any issue in the case, there being no allegation in the bill of complaint that the witness has either made an entry in the land office under the Timber and Stone Act, or has transferred any land to the defendant herein, and for that reason the testimony is wholly irrelevant and immaterial.

Q. Mr. Dodd, in the course of you examination, I understood you to say that you went to this land, and that you afterwards entered the land, or in connection with a man by the name of Watson? A. Yes, sir.

Q. Was that right?

A. Yes. Watson was with me at the time I took the land up.

Q. Was anybody else with you? A. No, sir.

Q. Did Griswold go with you? A. No, sir.

Q. In this examination, if Griswold has testified that he went upon this land with you, was he correct in so stating, or was he not at the time you cruised the land?

A. Griswold wasn't present at all at that time.

Q. I think you said you had seen this land before?

A. Yes, I have seen it.

Q. Had you ever been over it?

A. Yes, sir; I have been over it before.

Q. On more than one or two occasions?

A. No, not more than once or twice.

Q. At the time when you entered this land, were you

(Testimony of Allen Dodd.)

a citizen of the United States, over the age of twenty-one years? A. Yes, sir.

Q. Had you ever theretofore made an entry under the Timber and Stone Acts in this country?

A. No, sir.

Q. Were you then a qualified entryman under the laws of the United States, and under the Timber and Stone Act? A. I guess so.

Q. Well, you had had some intention before that time of taking up a timber and stone claim, had you not?

A. Oh, yes.

Q. How long before?

A. Well, several years; that was my intention when I came west to take up my rights in timber.

Q. Had you any knowledge or intention of taking up a homestead before the time when you took up a timber and stone claim?

A. Yes, I had already squatted on my homestead, on what I calculated to be homestead.

Q. Well, this land was unsurveyed land then, was it, this homestead?

A. Yes, it was then; it isn't now.

Q. It is surveyed now? A. Yes, sir.

Q. Have you made your homestead filing upon this land?

A. No, sir; the returns ain't in yet from the surveyor.

Q. The survey hasn't been accepted then?

A. No.

Q. You intend to make a homestead entry now, as soon as the survey is accepted, do you?

(Testimony of Allen Dodd.)

A. Yes, sir.

Q. Now, as to the time when you went to the land office to make your filing, do I understand you to say that you came to the land office at Helena with your brother? A. Yes.

Q. And that time you knew the description of the land? A. Yes, sir.

Q. Did you have in your possession the maps at the time you came to the land office?

A. I had the minutes of the land with me. I don't know in what form.

Q. Will you tell us whether or no, you took the description of the land from the maps that you had in your possession, or whether it was given to you by Mr. Cobban, as you have testified?

A. Well, I took the descriptions myself to Mr. Cobban, if I remember right, and he wrote it in a proper shape—better than I could do.

Q. At the time, then, when you made your timber land entry, you had taken the description of the land to Mr. Cobban, and he had written it out for you in more complete form than you had it yourself?

A. Yes, sir.

Q. Now I will ask you to state if that time, at the time you made your first entry of the land, and when you went to the land office you signed a statement which contained the following clause: "That it contained" meaning the land, "no mining or other improvement, nor as I verily believe, any valuable deposit of gold, silver, cinnabar, copper or coal." A. Yes, sir.

(Testimony of Allen Dodd.)

Q. "That I have made no other application under said acts." A. Yes sir.

Q. "That I do not apply to purchase the land above described on speculation, but in good faith to appropriate it to my own exclusive use and benefit, and that I have not directly or indirectly made any agreement or contract, or in any way or manner with any person or persons whomsoever, by which the title I may acquire from the Government of the United States may inure in whole or in part to the benefit of any person but myself."

A. Yes, sir; as near as I can remember, that is right.

Q. Well, was that statement true at that time?

A. Yes sir.

Q. Now, as I understand you, you went to the land office and made that declaratory statement under oath, to the officers of the land office here in Helena?

A. Yes, sir.

Q. And at the end of something like sixty days after that, you returned to the land office here in Helena for the purpose of making your final proof, did you?

A. Yes, sir.

Q. You brought along witnesses with you, did you not? A. Yes, sir,

Q. And they came with you, did they?

A. Yes, sir.

Q. Now, at that time you will remember of certain questions having been read to you, and you having made answers to them in the land office?

A. Yes, I would if they were read over to me again.

(Testimony of Allen Dodd.)

Q. Well, now, this question was asked you: "Have your sold or transferred your claim to this land since making your sworn statement, or have you directly or indirectly made any agreement or contract, in any way or manner, with any person whomsoever, by which the title which you may acquire from the Government of the United States, may inure, in whole or in part, to the benefit of any person except yourself?" Was that question asked you? A. Yes, sir.

Q. Well, what answer did you make to that question, that you did or did not transfer the land?

A. I answered that I had not made any contracts at all about the land.

Q. That you had not sold or transferred it?

A. Yes, sir.

Q. Was that answer true? A. Yes, sir.

Q. You were asked the question: "Do you make this entry in good faith for the appropriation of the land exclusively to your own use and not for the use or benefit of any other person?" How did you answer that question? A. Yes, sir.

Q. You answered that question "yes, sir."

A. I did; yes, sir.

Q. Was that answer true? A. Yes.

Q. You were asked the following question also: "Has any other person than yourself, or has any firm, corporation, or association any interest in the entry you are now making, or in the land, or in the timber thereon?" Did you answer that question? A. Yes, sir.

(Testimony of Allen Dodd.)

Q. Was that answer true? A. Yes, sir.

Q. Then, as I understand you, after making your final proof, you made a deed of the land to somebody else?

A. Yes, sir.

Q. You are certain that you did so make such deed after the time you had made your final proof, are you?

A. Yes, sir; I am.

Q. Had you ever had any talk with Mr. Cobban, or anybody working for Mr. Cobban, prior to the making of this final proof wherein you agreed to sell this land?

A. No, sir.

Q. Were you not at perfect liberty after you had made your final proof, to sell that land to whomever you might see fit?

A. After I had made my final proof; yes, sir.

Q. Yes, sir.

A. Yes, sir; that is what I supposed I had.

Q. Now, you said you knew the names of your witnesses at the time when you came to the land office to make your final proof? A. Yes, sir.

Q. Who were these witnesses?

A. Marion Watson and Winfield Dodd.

Q. Why did you choose those two men as witnesses?

A. Because I couldn't get any other.

Q. Didn't you choose them for your witnesses because they were acquainted with the land that you wanted to enter? A. Yes, sir.

Q. Did you know the land and what it was most valuable for?

(Testimony of Allen Dodd.)

A. Yes, sir; they had been over the land.

Q. Then it is a fact that you chose them for your witnesses because they knew the character of the land?

A. Yes, sir.

Q. What was the character of the land that you entered, was it most valuable for the timber that was on it or for agricultural purposes?

A. The timber on it was all that it was good for.

Q. Was it of any value for agricultural purposes?

A. No, sir.

Q. You said that you furnished the description of the land to Mr. Cobban just when you went to his office?

A. Yes, sir.

Q. And was this description that you furnished to Mr. Cobban the description that he wrote out, the description of the land for you to take to the land office?

A. Yes, sir.

Q. At that time did you have any talk with him about selling him the land? A. No, sir.

Redirect Examination.

(By Mr. MAYNARD.)

Q. You never did have any talk with Cobban about selling the land to him?

A. Not about selling it to him.

Q. No, and you didn't know that you did sell it to him?

A. No; if I understood, I sold it to his agent.

Q. So you sold the land to Cobban without knowing it?

(Testimony of Allen Dodd.)

A. Well, not particularly. Anyone's agent, I guess, can do business for them.

Q. Well, did you know that you were selling it to Cobban through his agent? A. Yes, sir.

Q. You knew that? A. Yes, sir.

Q. And you sold it to Cobban through his agent, and that same agent was the man that paid you the one hundred dollars? A. Yes, sir.

Q. And the same man who paid the purchase price of the land into the land office, was it?

A. I think so.

Q. And that man was Mr. Catlin? A. Yes, sir.

Q. And you sold it to him on the same day?

A. Yes, sir.

Q. And you got your hundred dollars on that day?

A. Yes, sir.

Q. Well, now, didn't you know when you went to the land office that you were going to do that?

A. No, sir.

Q. You didn't know that, you say? A. No, sir.

Q. Nothing had been said to you at all as to what you were to do after you proved up?

A. Nothing. Mr. Cobban and none of his agents had never said nothing.

Q. None of his agents; you mean by that Catlin or Pound? What did Mr. Watson say to you; did he say whose agent he was?

By Mr. BICKFORD.—We object to that upon the ground that it is irrelevant and immaterial, and further

(Testimony of Allen Dodd.)

upon the ground that it has not been shown that Marion Watson was the agent of anybody.

A. Marion Watson wasn't in the employ of Mr. Cobban at the time that we cruised out my claim.

Q. How do you know that?

A. I know it because he said so.

Q. Who did he say he was working for?

A. That he was just working for himself.

Q. What was he doing?

A. He was cruising out timber.

Q. Looking up pieces of land that had got timber on?

A. Yes.

Q. And reporting to Cobban, wasn't he?

By Mr. BICKFORD.—We object to that as being leading.

A. I don't remember.

Q. Well, now, then, if Mr. Cobban, or his agent, Mr. Pound or Mr. Catlin didn't tell you that you were going to get this hundred dollars; who was it that told you that?

By Mr. BICKFORD.—We object to the question for the reason that the witness has not testified that anybody told him that, and it is assuming a fact as having been testified to by the witness, when it has not.

A. No one told me.

Q. No one told you? A. No, sir.

Q. You didn't hear of it at all?

A. Yes, I heard that they was making some offers of

(Testimony of Allen Dodd.)

a hundred dollars above all expenses, but I didn't know what firm it was.

Q. Didn't know what firm it was? A. No, sir.

Q. Who did you hear that was paying a hundred dollars above all expenses for the land?

By Mr. BICKFORD.—We object to that as manifestly calling for hearsay testimony, and further it is wholly irrelevant and immaterial.

A. I don't remember; quite a number.

Q. Quite a number? Well, name one.

A. Well, I cannot think of his name now.

Q. Cannot think of his name?

A. His name is—the man that lives up where I took up my claim.

Q. You cannot think of his name, though?

A. No, not just at present.

Q. Well, that man told you this, that you could get a hundred dollars over and above expenses if you would take up a claim; who else told you that?

A. He didn't tell me what firm, nor what—that there was anything definite of it. He just was guessing at it I presume.

Q. Just guessing at it? A. Yes, I presume so.

Q. And he was the only one?

A. No, I heard others making that—making them guess remarks.

Q. Making what?

A. Making them guess remarks.

Q. Making them guess remarks, can you recall their names? A. No, sir.

(Testimony of Allen Dodd.)

Q. Cannot recall one?

A. Yes, one's name was John McDonald. He is living there now.

Q. Now, there is two. Now, name the third one.

A. I don't believe I can.

Q. Well, Allen, had you heard that from Marion Watson?

By Mr. BICKFORD.—We object to that as being leading.

A. Yes, I heard it from Marion Watson.

Q. That is three; well, state if at the time you met him up on that road that you have referred to—was that the time when he told you that?

By Mr. BICKFORD.—We object to that for the reason that it is leading, and further irrelevant and immaterial.

A. Yes.

Q. And just as soon as you had heard that from Marion Watson you started to take up your claim, did you not?

By Mr. BICKFORD.—That is objected to also upon the ground that it is leading, and further that it is irrelevant and immaterial and has no bearing upon any of the issues made by the pleadings in this case.

A. It was shortly afterwards.

Q. And when you say you sold to Cobban without knowing it you didn't care who you sold to so long as you got your one hundred dollars, did you?

By Mr. BICKFORD.—We object to that upon the

(Testimony of Allen Dodd.)

ground that it is irrelevant and immaterial. It is also leading, and is not responsive to any issue made by the pleadings in this case.

A. Well, it was the best that I could do considering my circumstances.

Q. Considering your circumstances, just what do you mean by that?

A. Well, I wasn't able to file and prove up on a timber claim without borrowing money.

Q. And Catlin paid the money into the land office and paid you the hundred dollars and you deeded to him, or his principal on the same day? A. Yes, sir.

Q. Well, now, there was nothing that you had in mind from the beginning to the end except your getting this hundred dollars, was there?

By Mr. BICKFORD.—That is objected to as leading.

A. Oh, yes, I had different things in my mind.

Q. Well, what was one of the different things that you had in mind, Mr. Dodd?

By Mr. BICKFORD.—Well, we object to that as not being proper cross-examination, and not relevant or material or responsive to any of the issues raised by the pleadings in this case.

A. Well, I was calculating to try and get a contract for logging that winter.

Q. Well, what else did you expect to do?

By Mr. BICKFORD.—Well, we object to that as not being proper cross-examination, and not relevant or

(Testimony of Allen Dodd.)

material or responsive to any of the issues raised by the pleadings in this case.

A. Nothing but log, if I could get a contract working at logging.

Q. You was going to take this timber from this location for that purpose, weren't you?

A. No, sir, I had timber already engaged right in my home.

Q. Right at home? A. Yes, sir.

Q. Then you were not going away from home twenty or thirty miles to get the timber for that purpose?

A. No, sir.

Q. You never did expect at any time to do anything with that piece of timber which you located at the time you located it except to sell it, did you?

By Mr. BICKFORD.—We object to that as not being proper cross-examination, and not relevant or material or responsive to any of the issues raised by the pleadings in this case.

A. Well, I couldn't do anything else with it.

Q. And you did go on the very day that you filed with Mr. Marion Watson, on the day that he told you you would get one hundred dollars after you made your final proofs?

By Mr. BICKFORD.—We object to that as being irrelevant and immaterial and as calling for an opinion from the witness, and not an answer. And for the further reason that the question has been asked several

(Testimony of Allen Dodd.)

times and answered by the witness, and because it assumes a statement made by the witness that has not been testified to heretofore.

Q. And you knew before you went to the land office to make your final proof when the money was paid in by Mr. Catlin that you were going to sell to him?

By Mr. BICKFORD.—We object to that also for the reason that it assumes a state of facts not warranted by the testimony of the witness, and as being leading.

A. No, sir, I didn't know whether it was Mr. Cobban, or the Chippewa Falls Company, or what company it was. Marion Watson was telling me about this hundred dollars, that is all.

Q. Oh, you knew you were going to sell your land to some man, or some company and get your hundred dollars?

By Mr. BICKFORD.—We object to that for the reason that it is leading, and not in accordance with the testimony of the witness heretofore given.

A. I thought I would sell it, yes.

Q. And get your hundred dollars for it?

A. Well, maybe more, and maybe less when I sold.

Q. But whether it was the Chippewa Falls Company or Mr. Cobban you didn't know?

A. No, not at the time Marion and me had the conversation.

Q. Not at the time Marion and you had the conversation, but that was several months preceding the time when the money was paid in by Catlin.

(Testimony of Allen Dodd.)

A. Yes, sir.

Q. I mean did you already know that the money that was paid in by Catlin and the deed that you made on the day that you received the hundred dollars, did you know that before you went to the location yourself, did you know how much you were going to get?

By Mr. BICKFORD.—We object to that as not being in accordance with the testimony of the witness heretofore given and as irrelevant and immaterial.

A. No, sir.

Q. Well, you knew that you were either going to sell to Mr. Cobban or someone representing him?

By Mr. BICKFORD.—We object to that upon the ground that it is irrelevant and immaterial and not responsive to any of the issues raised by the pleadings in this case, and further that it is leading.

A. I knew that when I did sell to him.

Q. You knew that before you got to the land office, didn't you? A. Yes, sir.

By Mr. BICKFORD.—We now appeal to the Examiner to prevent this argumentative way of putting questions to the witness.

Q. But I say, then, you actually knew that the money that was paid in and you knew then that you was going to sell to Mr. Cobban?

By Mr. BICKFORD.—We object to that as assuming a contrary state of facts, and one that has not been testified to by the witness and an indirect effort on the

(Testimony of Allen Dodd.)

part of counsel to compel the witness to answer according to the question asked whether it is the actual facts within the knowledge of the witness or not.

A. No, sir, I do not.

Q. But as a matter of fact you did?

By Mr. BICKFORD.—We object to that for the reason that it assumes a contrary state of affairs from that which has been testified to by the witness, and an endeavor on the part of counsel to compel the witness to answer according to the question asked whether it is according to the state of facts testified to and within the knowledge of the witness or not.

Q. The deed shows that you did and you say that you did.

A. I did, but it wasn't. I didn't know anything about it before the final proof.

Q. But, then, I say you did after the final proof?

A. Yes.

Q. How long after the final proof?

A. Well, it was inside of an hour.

Q. Well, now, inside of an hour after you made the final proof, and you deeded to Mr. Cobban. Who told you that you must deed?

By Mr. BICKFORD.—We object to that for the reason that it assumes a state of fact not testified to by the witness, namely that he had been told that he must deed.

A. No one had told me anything.

Q. You say you found out then and there after your final proof; how did you find that out?

(Testimony of Allen Dodd.)

A. Well, found out from Mr. Cobban's agent.

Q. Mr. Cobban's agent? A. Yes, sir.

Q. What did you find out from him?

A. I found out that I could transfer or sell that deed if I wanted to to them for a hundred dollars.

Q. And you don't know and had had no talk with this Mr. Catlin or anybody on that day, or at any time before in your life about what you were to do?

A. I never had any talk with anyone concerning the selling of this claim before I proved up on it.

Q. But wasn't it understood between you that you were not to know anything about it until after you had made your final proof?

A. I didn't have any talk to that effect.

Q. No talk to that effect, but didn't you say you understood it without anything being said to you about it?

By Mr. BICKFORD.—Well, we object to that again for the reason that it is an evident effort on the part of the counsel to compel the witness to answer questions contrary to the state of facts that has been testified to heretofore and further as being irrelevant and immaterial and an effort upon the part of counsel for the Government to cross-examine his own witness, and more than that, it is not proper redirect examination.

A. I don't see how I could.

Q. You don't see how you could? A. No.

Q. Well, now, will you swear, Allen Dodd, that you didn't so understand it without anything being told you

(Testimony of Allen Dodd.)

in words that you were to sell to Cobban or his agent?

By Mr. BICKFORD.—We object to that for the reason that the understanding of the witness has nothing to do with the issues framed in this case, and that it is irrelevant and immaterial. And if he had an understanding in accordance with the facts testified to by him, it would not be binding on either party.

A. Nothing more than I have already said.

Q. And just what did you mean by that?

A. I mean this was our talk.

Q. This was the talk that you were to get a hundred dollars? A. Yes, sir.

Q. You were not told by Cobban or his agent, or by your brother in law, Marion Watson, or by Griswold, or anyone of the kind that this agreement was void or that it was illegal to make it, but that they would have one just the same, and would carry it out after you had made your final proof? A. I don't remember.

Q. Don't remember anything about that?

A. No, sir.

Q. Allen Dodd, how many times have you been sworn before you came here, in regard to this matter?

A. Twice, I believe.

Q. You were a witness before the Grand Jury, were you not?

A. My—I believe I was there.

Q. But don't you know whether you were there or no?

A. Yes, sir.

Q. You remember seeing me there, do you?

(Testimony of Allen Dodd.)

A. Yes, sir.

Q. You remember of testifying in my presence?

A. No, sir.

Q. You don't remember that?

A. I remember of your reading a document to me.

Q. At that time and place? A. Yes, sir.

Q. Do you know what that document was?

A. No, sir.

Q. You don't remember that, you say?

A. No, sir.

Q. Well, you say it was twice before; now, when was the other time, Mr. Dodd?

A. Well, they swore me the time of the making out of this document.

Q. Where was that? A. In Missoula.

Q. In Missoula? A. Yes, sir, in Missoula.

Q. Who was present?

A. Mr. Griswold and two other gentlemen, lawyers, I suppose.

Q. At that time and place, do you remember the question being asked you, "Where do you live?"

By Mr. BICKFORD.—We object to all of this for the reason that it is irrelevant and immaterial, and an effort upon the part of counsel for the Government to cross-examine his own witness.

A. No, I don't remember.

Q. And your answering him, "My postoffice address is Bonner." Was that true? A. Yes, sir.

(Testimony of Allen Dodd.)

Q. And the question, "What is your occupation?" and your answering, "I am a laborer." Was that true?

A. Yes, sir.

Q. And the question, "Have you any family?" and your answering, "No, sir, I am a bachelor." Was that true?

A. **Yes, sir.**

Q. And the question, "Are you a brother of Harrison Dodd?" and your answer, "Yes, sir." Was that true?

A. **Yes, sir.**

Q. And the question, "Mr. Dodd, did you, under the Timber and Stone Act, make filing and final proof on the southwest quarter of section thirty, township 15 north, range 13 west?" and your answering, "Yes, sir." Was that true? A. Yes, sir.

Q. That was the same description as contained in your deed, Mr. Dodd? A. Yes, sir.

Q. And to the question, "Who was with you?" And your answering, "My brother, Winfield Dodd, was with me when I made the filing." Was that true?

By Mr. BICKFORD.—We object to all of these questions, and all of these answers being read to the witness from a paper in the possession of counsel for complainant in this case, and move to exclude from the testimony all questions which have been read from the paper for the reason that it is irrelevant and immaterial, and for the further reason that the document from which the questions were read have not been submitted to counsel for the other side for their inspection prior to their being read and put to the witness.

(Testimony of Allen Dodd.)

A. Yes, sir.

Q. And your being asked this question, "How did you happen to do this, tell me about it?" To which you answered, "I made the entry in my name, but I made it for R. M. Cobban." Was that true or was that false?

A. That was false.

Q. And the question, "Did you have any agreement about it before making entry, did you talk to Mr. Griswold about it before making entry?" To which you answered, "I had a talk with certain parties, and there was a chance for certain persons to use their right and sell again." Was that true or false?

By Mr. BICKFORD.—Do you understand it, Mr. Dodd?

By the WITNESS.—Yes.

Q. I will read the other question: "Who did you have that conversation with?" To which you answered, "As near as I can remember, it was with Mr. Griswold."

A. Yes, I talked with Mr. Griswold.

Q. It was true, then, that you had a talk with Mr. Griswold? A. Yes, sir.

Q. This question was put to you and answered by you as follows: "Did you go and locate this land?" And your answer was, "Yes, sir." Was that right?

A. Yes, sir.

Q. And this question was asked you: "What did you do then, did you see Mr. Cobban?" To which you answered, "Yes, sir, after I located the land I came down to see Mr.

(Testimony of Allen Dodd.)

Cobban myself, and brother Winfield came to see Mr. Cobban, and we seen him at his office." Was that true?

A. Yes, sir, that was true.

Q. And also this question: "Was anyone else in the office?" And your answer to that was, "Yes, sir." Was that true? A. Yes, sir, that is true.

Q. And the next question was, "Who else was there?" to which you answered, "Mr. J. B. Catlin." Was that true? A. Yes, sir.

Q. This question was also asked you: "What was the conversation there?" To which you answered: "We brought the record of the land there, and Mr. Catlin wrote out the final papers, then Mr. Cobban, he furnished us money to go to Helena." Was that true?

A. Yes, sir.

Q. And then this question was asked you: "How much money did he give you at that time for expenses?" And you answered: "He gave me $29.00." Was that true?

A. Only when I said "furnished" I meant that I borrowed the money of him there.

Q. But you want to modify that by saying that you borrowed it from him?

A. Well, I meant that just the same.

Q. How much money did he give you at that time for expenses? That question was asked you then, and you answered: "He gave me $29.00." Was that so?

A. I might have remembered at that time. It might have been so; I don't remember now.

Q. And you were asked: "Did he give you a railroad

(Testimony of Allen Dodd.)

ticket?" And you answered: "No, sir, I think he only gave us $29.00." It might have been $29.00, might it not?

By Mr. BICKFORD.—We object to that as being leading.

A. Yes, sir.

Q. And the further question was asked you: "What was the understanding upon which he gave you this $29.00 to go and make this filing?" And to which you answered: "He gave it to us to go to Helena for expenses, then when we proved up sixty days later he was to give us a hundred dollars apiece and I was to make a deed to him." Was that true or false? A. That was false.

Q. What was there false about that?

A. Why, because if I said that something—that that would be all right, it was false.

Q. Well, as a matter of fact, you did deed to him the very day that you did prove up?

A. Yes, sir. Read that question, please; just those few words?

Q. What was the understanding upon which he gave you this $29.00 to go and make your filing? He gave it to us to go to Helena to pay for expenses, then when we proved up sixty days later, he was to give us a hundred dollars apiece, and I was to make deed to him.

A. That is false.

Q. In what particular was that false?

A. In the part where it says in the proving up part.

Q. Well, what was there about the proving up part

(Testimony of Allen Dodd.)

that was false? You got your hundred dollars and you deeded to him. Now, what part of that was false?

A. I never had no talk with Cobban about getting a hundred dollars before I proved up.

Q. Just in that part? A. Yes, sir.

Q. That is the only thing you want to correct about it now?

A. Well, there might be several things there. I confess that I wasn't quite—I didn't know nothing anyway, but when I get a little bit of whisky in me, people that has got lots of sense might get at me and make me say things that I wouldn't. That was the case when that was made out.

Q. Well, what do you mean by that, that you was drinking at the time that you swore to this affidavit?

A. I mean that I wasn't sober.

Q. How much had you been drinking?

A. Well, drank quite a little on the road; all the way to Bonner or to Missoula, and then we drank some afterwards.

Q. Have you been drinking now so much?

A. No, sir.

Q. Are you sober to-day? A. Yes, sir.

Q. You have been sober since you have been on the witness stand? A. Yes, sir.

Q. Will you swear that you deeded this land to Cobban or to his agent, Mr. Catlin? A. Yes, sir.

Q. And you swear that you received a hundred dollars yourself? A. Yes sir.

(Testimony of Allen Dodd.)

Q. That is what you say here?

A. Yes, but that—

Q. Now, what is the difference between your testimony when you are drunk and when you are sober?

By Mr. BICKFORD.—We object to the cross-examination of the witness by counsel.

A. Yes, but that alludes, don't it, that I had made a bargain beforehand?

Q. Yes, these words, that is all. Now, Allen, why did you hang so on the question of a bargain. Is that what Cobban during all the time that you have been associating with him, and his lawyers, have told you you must be careful not to swear to?

A. No, to tell you the honest fact, I haven't talked a great deal with them. I can prove that I was with Mr. Cobban. I was up to the fire department with him last night and had quite a long talk, and we looked at the place there, and then we started back.

Q. You had been with Mr. Cobban since you arrived in the city?

A. Yes, sir, the only time, though, was last night.

Q. Well, during the time that you saw him, did you not?

A. No, sir, I met him right there at the door.

Q. You met him there at the door? A. Yes, sir.

Q. And he went off with you? A. Yes, sir.

Q. Didn't he talk to you about the effect of your testimony? A. No, sir.

(Testimony of Allen Dodd.)

Q. Didn't he talk to you and didn't he take you up to see his lawyer, Mr. Walsh?

A. Yes, sir, he took me—well, I suppose it was his lawyer.

Q. Well, in that conversation wasn't your testimony referred to?

By Mr. BICKFORD.—We object to that as being irrelevant and immaterial, and in no way involving any of the matters in issue in this case.

A. There was some talk. I don't remember just what it was.

Q. And there was some talk in regard to a loan, was there not? A. No, sir.

Q. Nothing said about a loan? A. No, sir.

Q. Nothing said about the fact that you must be careful not to say that there was an agreement in the matter, or anything of that kind said? A. No, sir.

Q. By nobody? A. No, sir.

Q. And you have heard that from nobody?

A. Yes, I heard it from some other people.

Q. Well, what other people? What other people told you that you must be careful not to say there was an agreement?

By Mr. BICKFORD.—We object to that as unfair, and further, that it is hearsay, and irrelevant and immaterial, and has no bearing upon the issues in this case.

A. Well I don't know just who. I don't remember.

By Mr. BICKFORD.—At this time I demand from the gentleman representing the Government a copy of the re-

(Testimony of Allen Dodd.)

port from which the questions just propounded to this witness were taken, and that I be furnished with the same between now and the time I am called upon for further cross-examination of this witness.

By Mr. MAYNARD.—I will furnish you with a copy of the affidavit.

By Mr. BICKFORD.—I said a copy of the paper from which the cross-examination was made.

By Mr. MAYNARD.—Yes, sir, I will let you have it.

By Mr. BICKFORD.—And I will let you know whether it is satisfactory or not.

At this point an adjournment was taken until ten o'clock the following day, being the fifteenth day of March, 1902.

HENRY N. BLAKE,
Examiner in Chancery.

Saturday, March 15, 1902, 10 A. M.

Hearing resumed pursuant to adjournment.

The witness DODD, being recalled by complainant for further examination.

Mr. BICKFORD.—Counsel for defendant demands that counsel for complainant furnish the paper from which the redirect examination of the witness Dodd was made, concerning which he was questioned.

Mr. MAYNARD.—I will state that I have not the slightest objection to counsel for defendant having the contents of paper, and I have at my own expense had

(Testimony of Allen Dodd.)

one of the stenographers who is taking the testimony in this case make a copy of the same, that he will be sworn to testify that it is a true and compared copy of my own private paper, and that I am willing that counsel should have that true and compared copy and will furnish it to him just as soon as the stenographer can transcribe the same, and he has told me that he will have it inside of five minutes.

Mr. WALSH.—We may as well be understood about the matter; we desire the original paper from which the witness was examined for the purpose of our examination; if counsel does not desire to give that we will move that all the testimony he has given as the same appears in the paper concerning which he was inquired about be stricken from the record.

The EXAMINER.—Was the paper on which the witness Dodd was examined yesterday afternoon an original or a copy?

Mr. MAYNARD.—A copy of an original paper, and my own private property, but I am willing to furnish another copy which will be a true and exact copy of that copy, and I am willing to have the stenographer placed upon the stand and swear to the fact that he did make a true copy of it; the only objection I have in the world to having counsel use my paper is that it is joined and connected to other private papers which I desire to keep in my own possession.

(Testimony of Allen Dodd.)

Cross-examination.

(By Mr. BICKFORD.)

Q. You spoke something about a Chippewa Falls Company being in the market for land in the Blackfoot yesterday sometime, you had heard of such a company being there?

A. Yes, sir, I have been on their land, I was told it was their land.

Q. They have lands on the Upper Blackfoot as I remember the matter? A. Yes, sir.

Q. Now, you had made no agreement or bargain to sell this land you entered to the Chippewa Falls Company, had you, any more than you had to anbody else?

A. No, sir.

Q. Now, at the time when you say you made some sort of a statement in Missoula where had you gone from to go to Missoula? A. Went from my home.

Q. Who did you go with?

A. Went with Mr. Griswold.

Q. Did he request you to go with him?

A. Yes, sir.

Q. How did you go down?

A. He furnished the team.

Q. Which way did he come from, from Missoula, or did he come down the Blackfoot?

A. Came down the Blackfoot.

Q. Picked you up at your place and went on to Missoula? A. Yes, sir.

(Testimony of Allen Dodd.)

Q. In going down there did he make any statement to you as to what he wanted you to do in Missoula?

A. No, sir.

Q. As I understood you to say you took a number of drinks on your way down? A. Yes, sir.

Q. Did you continue to drink after you came to Missoula?

A. Yes, sir, several drinks after I got there.

Q. And where were you at the time this statement was made out, what place in Missoula?

A. I do not remember the name of the building.

Q. Was it the Missoula Hotel? A. No, sir.

Q. Who paid for the drinks that you took that day?

A. I don't know, these drinks were in bottles.

Q. On the way down? A. Yes, sir.

Q. It was not your bottle, was it? A. No.

Q. Was it Griswold's? A. Well, I suppose so.

Q. Who paid for the drinks when you took them in Missoula, did you go to the bar and take them?

A. Yes, sir.

Q. Who paid for them, then?

A. I don't remember whether I was treated or whether I paid for them myself.

Q. Griswold was present when these drinks were being taken all the time? A. No, sir.

Q. He was not?

A. No, sir, not after we went to Missoula.

Q. Who was present?

A. I don't remember, I walked around, I am ac-

(Testimony of Allen Dodd.)

quainted with some few in Missoula, and of course after I had a little start I might have taken a few more.

Q. Who was present at the time this statement was made out? Was Mr. Griswold there?

A. Yes, sir.

Q. Was Mr. Zevely there?

A. Tell me who Mr. Zevely is.

Q. Mr. Zevely is special agent of the Interior Department; smooth-shaven gentleman, dark eyes and hair and weighs about 190 pounds. A. Yes, sir.

Q. Was the stenographer there? A. Yes, sir.

Q. And the stenographer wrote down whatever was said or done, did he? A. Yes, sir.

Q. Do you know who the stenographer was?

A. No, sir.

Q. Did you sign your name to that?

A. I don't remember of signing my name to it.

Q. Did you read it over before you signed it, if you did sign it?

A. I did not, they may have read it to me.

Q. Do you have any recollection of their having read it to you? A. I could not say for certain.

Q. Do you know whether you answered the questions or whether the questions were propounded already, were asked and answered by the same person, or how that was done?

A. There were some questions that were asked in a way like this: "You didn't say so and so, did you not"?

Q. And did it purport to take down your exact lan-

(Testimony of Allen Dodd.)

guage or did it take down the language of the other fellow, the one who was asking the questions?

A. I could not say that either.

Q. Now, do you remember of having sworn to this statement? A. Yes, sir.

Q. You did swear to it, then?

A. Yes, sir, I remember of being sworn.

Q. Was that before the typewriter had written it out in form or was it after it had been written out?

A. I don't remember but I think it was before.

Q. Before it was written out on the typewriter?

A. Yes, sir.

Q. Now, when was it that it was written out in typewriting? Was it right there at the same time, or was it some hours afterwards?

A. It was right there.

Q. Did they have a typewriting machine right in the room? A. Yes, sir.

Q. And you stayed there until it was written out, or did you go out in the meantime?

A. I believe I stayed there until it was all written.

Q. Who was present, anybody besides yourself, Griswold and Zevely, during this time? A. No, sir.

Q. No one else there? A. No, sir.

Q. Did they tell you what the object of obtaining this affidavit was, what they wanted to do with it?

A. No, sir, I had no idea at the time what the object was; if I had been just in my right mind I never would have given an affidavit at that time.

(Testimony of Allen Dodd.)

Q. Then, the reason for your giving your affidavit was because you were under the influence of liquor?

A. I was not just in my right mind I confess.

Q. Didn't you do it because you were doing a friendly act for Griswold, because he requested you to do so?

A. I did it just because I was flustrated as near as I can remember, I did not know exactly what I was doing.

Q. Then it was not out of any friendship for Griswold or for Zevely that you did this? A. No, sir.

Q. But they wanted you to do it, they asked you to do it, didn't they? A. Yes, sir.

Q. Both of them? A. Well, yes.

Q. Didn't they say at that time that they were going to use this affidavit to make trouble for Mr. Cobban?

A. They did not say anything to that effect right there.

Q. Did they afterwards or before?

A. I heard Mr. Griswold make some remark to that effect.

Q. Was that before or after the affidavit was signed?

A. Before.

Q. You knew that about this time Griswold had a lawsuit against Cobban, didn't you?

A. Yes, sir, but I didn't understand that it was anything concerning United States affairs.

Q. No, but it was between Griswold and Cobban?

A. Yes, sir.

Q. Now, what was the nature of the talk that Gris-

(Testimony of Allen Dodd.)

wold made at the time that you speak of before this affidavit was signed, what did Griswold say?

A. Oh, I heard him make some remark to the effect that he would have his rights or he would have the whole outfit of us before the United States Court, something like that.

Q. He said he would have his rights or he would have the whole outfit up before the United States Court?

A. Yes, sir, something to that effect.

Q. Didn't he say in fact to you that he would have the whole lot of you in the penitentiary?

A. Well, I believe he said it might come to that.

Q. If Cobban did not settle with him that he would have the whole outfit in the penitentiary?

A. I don't remember whether he worded it just so.

Q. What rights did Griswold refer to when he said he must have his rights, or would have his rights, or he would have everybody before the United States Court? What rights did he claim?

A. I don't know just exactly, I think he claimed Mr. Cobban owed him.

Q. And that was what he referred to when he said his rights?

A. Yes, sir, owed him for timber that he had cruised out and located and had not his pay for.

Q. Claimed that Cobban owed him for services that he had done for Cobban? A. Yes, sir.

Mr. WALSH.—In view of the statement of counsel that the paper from which the witness was examined on

(Testimony of Allen Dodd.)

yesterday and from the record of which he was asked if he did not testify as set forth in the paper, was not the original affidavit or sworn statement made by this witness and which was reduced to writing, but was simply a copy thereof, we move to strike out all of the testimony of the witness concerning any statements made in this affidavit for the reason that in this way the contents of the copy of the affidavit or sworn statement have been produced in evidence, and no proper foundation has been laid for the introduction of secondary evidence, as to the contents of the original sworn statement or affidavit, and no proof has been made of the loss or destruction of the same.

Mr. BICKFORD.—Counsel for defendant now state that since coming into the courtroom counsel for complainant has stated that he has in his possession the original paper which he used yesterday and which he says is a copy of the original affidavit made by the witness now upon the stand; it appears from that that the stenographer cannot be copying from the document which counsel has now in his possession, and that it is the intention of counsel to produce a copy of the copy and that the work must have already been done, and therefore we ask for the purpose of expediting the hearing that we be allowed to use the papers that were used by counsel yesterday in his examination of the witness.

Mr. MAYNARD.—I would say in reply that the official stenographer who is taking this testimony in part, informs me that he took the same off in shorthand and

(Testimony of Allen Dodd.)

that it was longer than he expected and it took him some time to transcribe the same from his stenographic notes; he assured me he would have them here promptly at the opening of court this morning; I was very anxious to favor my brother on the other side with a copy of this paper, although I feel under no legal obligations to do this; that I have seen him this morning and he stated that he would be here in a few moments.

Mr. WALSH.—The paper handed by counsel for the Government to the counsel for defendant is a copy of the paper from which the witness Dodd was examined, and it now appearing from this paper that it is an affidavit made by the witness Allen Dodd, we move to strike out all testimony concerning the fact alleged to have been sworn to by the witness Allen Dodd upon the ground that the affidavit itself is the best evidence, and to strike out all testimony concerning this by reason of the fact that no testimony has been offered concerning the loss or destruction of the original, and no foundation has been laid for the introduction of secondary evidence concerning its contents.

Saturday, March 15th, 1902, two o'clock P. M.

Hearing resumed pursuant to recess.

ALLEN DODD, a witness heretofore called, being recalled for further examination by complainant, testified as follows:

Redirect Examination.

(By Mr. MAYNARD.)

Q. There is two questions that I neglected to ask you,

(Testimony of Alien Dodd.)

that I overlooked yesterday afternoon from this affidavit that you made, that I want to ask you now. Did you not swear as follows: "You were to make a deed transferring your right?" and your answer was: "Yes, sir."

By Mr. WALSH.—To this we object upon the ground that it appears from the testimony already given that the testimony, if such it may be called, was in the form of an affidavit, and the witness cannot be questioned concerning any statements made, unless the affidavit is first presented to him and he has an opportunity to examine it. And we make this objection concerning all of the alleged statements made by the witness in the affidavit, and we demand that before the witness be required to answer the question he be presented with the original affidavit.

By Mr. MAYNARD.—I will say in answer to that that I haven't got the original affidavit which Mr. Dodd, the witness, made before Mr. Zevely, because the same is a part of the record of the Department of the Interior in Washington. But I have in my possession a copy of the same, and the identical paper which was used by me before the Gand Jury, and which the same witness testified and the same identical question and each and every one of the questions were put to him then that were contained in this affidavit which he says was presented to him when he was on the stand yesterday. He said if such a paper was presented to him, and he was asked there at that time, after using the same paper by this

(Testimony of Allen Dodd.)

witness that I used myself upon this same matter when he was a witness before the Grand Jury.

By Mr. WALSH.—We now move upon the statement of counsel to strike out all of the testimony of the witness concerning anything that he says because it appears that the same is in the possession of the Government.

A. I don't remember.

Q. Were you asked the question: "Did anyone go with you?" and your answer was: "My brother and Marion Watson." Was that true or false, at the time you went to make your deed?

By Mr. WALSH.—We object to that for the reason that it is irrelevant and immaterial, and an attempt on the part of counsel for the Government to cross-examine his own witness.

A. That was true.

Q. The question is, "Who is it?" and your answer was: "He is a man that was working for Mr. Cobban." Referring to Marion Watson. Now was that true or false?

By Mr. WALSH.—We object to this because it is an effort on the part of counsel for the Government to make as testimony in this case the contents of the written and sworn affidavit, and the affidavit is itself the best evidence of its contents; and this is an attempt on the part of counsel to cross-examine this witness concerning matters about which he has testified, and he has no right to cross-examine.

(Testimony of Allen Dodd.)

By Mr. MAYNARD.—I would say that I am taking the course that my brother Walsh took in the case in which he and I were engaged before Judge Knowles in the matter of pleas in abatement in the hearing which took place before Judge Knowles, when he insisted that, as a matter of law, and a matter of practice in the State of Montana, that he had the right after calling the witness, to impeach him by calling another witness, and questioning him before Judge Knowles. Before Judge Knowles, the position was sustained that my brother Walsh then took, and I am now following the precedent which he established for me by showing that this man twice before he appeared here and gave testimony, as contained in this affidavit, which is directly sworn to, and the matter which he has sworn to, had sworn to this state of facts, and I don't claim that he is a Government witness, except as an adverse witness.

A. That was only a mistake on my part. I didn't know at that time.

Q. Didn't know at that time, what?

A. That he was working for Cobban or working for Mr. Cobban.

Q. You didn't know it at the time? A. No.

Q. I don't understand you.

A. At the time that these things were being operated on.

Q. You didn't know that?

A. No, sir.

Q. Well, how did you come to say so at the time that you appeared before Mr. Zevely?

(Testimony of Allen Dodd.)

By Mr. BICKFORD.—It was Mr. Zeveley that said so, not you, wasn't it?

A. I don't know unless I wasn't in my right mind.

Q. Now, Allen, tell me were you drunk or sober at the time you appeared as a Government witness before the Grand Jury when I put this same question to you.

A. Well, I suppose I was sober then, but being the first time that ever I was called before a court or a jury or anything, I didn't realize or appreciate, or think to correct those mistakes. That is the only reason.

Q. So the first time, when you said that Marion Watson was working for Cobban at the time, and you swore to that before Mr. Zeveley, you was drunk, and when you came to swear to the same thing before him in the presence of the Grand Jury when I asked you the same thing, you didn't know enough to correct it when you swore to it again before the Grand Jury.

By Mr. WALSH.—We object to this for the reason that it is an effort on the part of counsel for the Government to make as testimony in this case the contents of the written and sworn affidavit, and the affidavit is itself the best evidence of its contents, and this is an effort on the part of counsel to cross-examine this witness concerning matters about which he has testified and he has no right to so cross-examine the witness.

In fact, I apprehend that Mr. Maynard will not undertake to disclose the facts which transpired before the Grand Jury at that time.

A. Well, I was confused and really didn't know as

(Testimony of Allen Dodd.)

you see, didn't know enough to answer it, or take my own part, and when I made this affidavit I only thought I was doing the same things as what—making the same affidavit as what I did say yesterday to you. I had no intention of saying anything out of the way only what was the truth. As near as I could I gave you the whole truth of what there was yesterday as near as I could.

Q. Well, you remember when you was before the Grand Jury, of me saying to you each and every one of these questions that were contained in this affidavit that you made before Mr. Zeveley, do you not?

A. I do.

Q. And you remember of me then asking you if the same answers would be made by you to those same questions if they were put to you by me without reading them, or put to you from my memory or in some other way. A. No, sir, I don't remember.

Q. You don't remember saying that?

A. No, sir.

Q. You say you remember of seeing this affidavit, and me asking you the same question. Now, let me ask you, did you at that same time offer to make that same change in any manner to any of your answers that I then read to you, in presenting the same question that I now put to you?

By Mr. WALSH.—We object to this for the reason that it is an effort on the part of counsel for the Government to make as testimony in this case the contents of the written and sworn affidavit, and the affidavit is it-

(Testimony of Allen Dodd.)

self the best evidence of its contents, and this is an effort on the part of counsel to cross-examine the witness concerning matters about which he has testified, and he has no right so to cross-examine his own witness.

Q. Can you answer that?

By the EXAMINER.—You may answer that question.

A. I remember, I do that.

Q. What was that?

A. Something in regards to staking claims, I believe. The question was, "Do you know others taking claims?" and I said, "If I remember right, no, only to the best of my knowledge."

Q. Now, let me see; this is the question: Did anyone else in that neighborhood do this same thing for Cobban, and you answered "Yes, sir, quite a number of them on the same day that I did." It was the talk in that community; "yes, sir, I guess so." Did you correct that?

A. I think it was something similar to that. I don't just remember, I was confused and I was almost beside myself.

Q. Well, then as I understand it you are sober now and are not beside yourself? A. Yes, sir.

Q. And yesterday you was sober and in your right mind?

A. Yes, sir, I was sober at that time, too. If I remember right, I spoke to you, but I think never being in any lawsuit or even a witness in any matter to my mind, that I was confused then.

(Testimony of Allen Dodd.)

Q. To the question, "You didn't know what you was signing" and the answer, "I did not except that it was a deed to this land." To come right out with the truth, I did not know what I was signing." Was that answer true or false?

By Mr. WALSH.—We object to the question for the reason that it is an effort on the part of counsel for the Government to make as testimony in this case the contents of a written and sworn affidavit, and the affidavit itself is the best evidence of its contents, and it is an effort on the part of counsel to cross-examine his own witness concerning matters about which he has testified and he has no right to do so.

A. I don't remember that.

Cross-examination.

(By Mr. BICKFORD.)

Q. When you were before the Grand Jury, Mr. Dodd, the questions and the answers were read to you by counsel, were they not?

A. I remember that this gentleman here—

By Mr. MAYNARD.—Read your affidavit.

A. Yes, sir.

Q. And when reading the affidavit he would read it right along and say "That is your answer, is it not?" That is the way he would say it to you. He didn't stop to ask you whether the answer was true or false?

A. No, sir.

Q. He would read it to you like reading a story out of a book? A. Yes, sir.

(Testimony of Allen Dodd.)

Redirect Examination.

(By Mr. MAYNARD.)

Q. You were asked a question whether you had any corrections to make to any of these answers, were you not? And you said that you had no corrections to make? A. No, it was difficult—

Q. And didn't you say that you had no corrections to make?

A. Yes, I did, but I didn't fully comprehend even then the meaning of that affidavit.

Q. You did not? A. No, sir, I did not.

ALLEN DODD.

Subscribed and sworn to before me this sixteenth day of March, 1902.

HENRY N. BLAKE,
Examiner in Chancery.

GEORGE D. GREENE, being recalled as a witness for complainant, testified as follows:

Direct Examination.

(By Mr. MAYNARD.)

Q. Mr. Green, I call your attention to the entry of Allen Dodd? A. Yes, sir.

Q. I wish you would state what the facts are in connection with his entry?

A. Well, he appeared at the office on the 25th of August and made a sworn statement in the regular form.

(Testimony of George D. Greene.)

Q. For what description?

A. For the southwest quarter, being lots 1 and 2, and the east half of the southwest quarter, section 30, township 15 north of range 13 west, and such proceedings were had in regular form that Cash Entry No. 6250, was made on said sworn statement; I have not got the data of that cash entry, I just took the number from the record book in order to learn whether the papers had been transmitted from the general land office and mislaid in our office, or whether they had not been received, and as soon as I discovered they had not been transmitted I came over without getting any further data.

Q. What does the cash entry show that you have there?

A. I have not got the cash entry, I have simply the sworn statement, the original filing paper.

Q. I thought you had the cash entry, the data of the cash entry?

A. I have not got the data of the cash entry, I have the number of it; of course it appears on our records over in the office.

Q. And the cash entry does not show that the money was paid into the land office for the purchase?

A. It must have been made or the cash entry would not have been made.

Q. Could you tell from the records in your office as to when, and the amount, etc.? A. Yes, sir.

(Testimony of George D. Greene.)

Q. What I desire now to ask you is, are you able to state by reason of your official position as register of the land office what is the occasion in the delay in transmitting the papers back to your office?

A. Well, I presume they were not given to the Commissioner when they were ordered to our office, the order for the return of the papers did not come through us, but they were sent us by letter "B" of June 18, from the commissioner of the general land office, and our only information concerning the matter was simply this letter; why they were not included in the others of course I cannot state.

Q. Are you able to state as to whether a patent did issue or not?

A. I am not, I did not look to see whether a patent did issue or not, but I could tell from our records.

Q. Whatever irregularity there is in connection with this entry I want to know.

A. Oh, there is no irregularity.

Q. There is no irregularity?

A. No, the entry was made and the papers transmitted to the general land office; the only trouble is when all these papers I have here were returned, that was omitted by some one in the Commissioner's office, and perhaps was omitted in the list handed the Commissioner of those desired returned.

Mr. WALSH.—You don't know that anybody ever asked them to be returned?

A. No, I do not.

(Testimony of George D. Greene.)

Q. You say all these papers belong to the files of the general land office, not your office, and were returned simply for the purpose of this action, and unless request has been made for this particular entry it would have remained on file in the land office at Washington?

A. Yes, sir, that is the original papers that have been introduced here.

Q. And all the other papers are as regular as the rest of them? A. Yes, sir, so far as I know.

Q. Just bring me those minutes after dinner, please?

A. You want the record of the patent, and the record of the entry, do you?

Q. And the final proofs.

A. Of course, the only record of final proofs we have is the entry book itself.

Friday, March 14th, 1902, two o'clock P. M.

GEORGE D. GREENE, a witness heretofore examined, being recalled by complainant for further examination, testified as follows:

Direct Examination.

(By Mr. MAYNARD.)

Q. Now, Mr. Greene, please let me know what record you have there?

A. I have the record of cash entries of the Helena land office, volume number three.

Q. What is that?

A. Volume number three.

(Testimony of George D. Greene.)

Q. Please open to that portion of the volume which relates to the entry of the witness, Mr. Allen Dodd, now on the stand? A. I have it here.

Q. What does that page show?

By Mr. BICKFORD.—We object to any testimony from the witness relative to the entry of Allen Dodd for the reason that there is nothing in the complaint calling in question the said entry of Allen Dodd and because it is irrelevant and immaterial and not responsive to any issue raised in the case.

By the EXAMINER.—Now, you can answer, Mr. Greene.

A. The record shows as follows: "November 16th, 1899, certificate number 6250, Allen Dodd of Bonner, Montana, lots one and two in the east half of the southwest quarter of section thirty, township fifteen north, range thirteen west, containing 151 acres, at two dollars and a half an acre, three hundred and seventy-seven dollars and fifty cents. Part payment made by surrender of military land warrant, $97.00 and $94.00."

Q. That was the date that you finished the hearing?

A. Yes, sir.

Q. November the 16th, 1899?

A. Yes, sir, November 16th, 1899.

Q. How much money was paid?

A. The equivalent of $377.50.

Q. Three hundred and seventy-seven dollars and fifty cents?

A. Yes, in cash, and military bounty warrants.

(Testimony of George D. Greene.)

Q. And military bounty warrants?

A. Yes, sir.

Q. How much was that?

A. I was trying to make out. The handwriting is not in my handwriting and I cannot exactly decipher. I am not certain as to the amount, but it indicates that three hundred dollars was paid in military bounty warrants, and $77.50 in cash.

Q. And in the other place it indicates?

A. That is right, I understand it now. Military bounty warrant, 97,054, and 94,399. Three hundred dollars for 120 acres. That is, $300 and then $77.50 was paid in cash.

Q. Have you any record there to show who the witnesses were? A. I have not.

Q. You have no papers in your office to show that?

A. No.

Q. What?

A. We have no papers in our office whatever. Everything connected with the entry was transmitted to the general land office. I might possibly be able, if there is an old slip from the newspaper in which the notice was published, but I doubt if we could find it now.

Q. Have you the records there relative to the entry of Winfield Dodd?

A. Yes, sir, it is cash entry 6251.

Q. Made November 19th, 1899?

A. Yes, sir, made November 19, 1899, by Winfield Dodd, for the north half of the northeast quarter and

(Testimony of George D. Greene.)

the northeast quarter of the southeast quarter of section 44, township 14 north, range 14 west, containing 120 acres, at $2.50 per acre; three hundred dollars received under the act of June 3d, 1878. I wish to add here that cash entry 6250 is also under the act of June 3d, 1878. What is known as the Stone and Timber Act.

Q. Both of them under the Stone and Timber Act?

A. Yes, sir.

By Mr. BICKFORD.—We now move to strike out the entry of Winfield Dodd for the reason that there is no issue raised in the bill of complaint herein with reference to that entry, and for the further reason that there is no allegation in the bill of complaint that the entry was wrongfully or unlawfully made, and it is therefore irrelevant and immaterial.

By Mr. MAYNARD.—This is under the same proposition, and I shall apply to the Court to amend the bill of complaint by putting in an allegation with reference to this entry, which by mistake was omitted.

Q. What is the consideration in that Winfield Dodd claim? A. Three hundred dollars cash.

Q. What was that paid with, the three hundred dollars, in cash? A. Yes, I said in cash.

Q. And that was on the same date, November 16th?

A. Yes, sir. They were probably witnesses for each other. As a rule when two or three make entries at the same time they are witnesses for each other to save expense.

Q. You haven't the witnesses?

(Testimony of George D. Greene.)

A. No, sir, they are all with the entry papers now in Washington.

By Mr. MAYNARD.—That is all, Mr. Greene.

By Mr. BICKFORD.—I want to remind the Court that we have never had an opportunity to cross-examine Mr. Greene, but we shall do that before we enter into our side of the case.

By the EXAMINER.—Very well, that will be all right.

The witness was thereupon excused from the stand.

Monday Morning, March 17th, 1902, ten o'clock.

Hearing resumed pursuant to adjournment.

Whereupon the witness, GEORGE D. GREENE, was recalled for the purpose of cross-examination.

(By Mr. BICKFORD.)

Q. In your direct examination, Mr. Greene, you took up the entry of one John Gilles?

A. Did I testify concerning John G. Gilles entry?

Q. Yes, John Gilles entry was the one you took up.

A. Charles Cloutier, I also testified concerning. My memory was that I testified concerning Charles Cloutier, but I don't recollect testifying about the entry of John Gilles, but perhaps I did.

Q. It is rather mixed, but you said in answer to a question from counsel: "The name there on the paper, Charles Cloutier of ————, for instance, was that supposed to represent his postoffice address?" and you answered, "Yes, sir, Clearwater, Clearwater, Montana."

(Testimony of George D. Greene.)

Q. Now, it appears from the notice which was published in the newspaper that there were three people there from Clearwater, Montana, and the word "all" was omitted? A. Yes, sir.

Q. Now, I will ask you to state if the notice so read by you would be regarded as defective notice or only as one that there was an immaterial omission in?

A. Well, there seems to have been a part of that published notice destroyed—that was all there when I testified on that date. I wouldn't consider that a defective notice, though. I would consider that the address of all of them was intended to be Clearwater from the reading of the notice. It reads: "He names as witnesses, John Gilles, C. L. Griswold, Steven Tepper, and A. J. Griswold, of Clearwater, Montana."

Q. Yes.

A. We have a notice clerk, and this notice appears to have been prepared by her; it is in her handwriting at least. Quite frequently that happens, but I would consider it a good notice.

Q. You pass upon the questions at the time of making final proof and in determining as to whether the final proof is sufficient upon which to issue the final receipt, and to entitle the person to the lands which they apply to enter? A. Yes, sir.

Q. That I understand to be a part of the duty of the register and receiver of the United States land office?

A. Well, it is a part of their duty, but in our office

(Testimony of George D. Greene.)

the chief clerk makes these examinations because we have so much to do that we cannot do it. In fact, I very seldom see the entire record in a final proof case. I cannot recall a single instance at the present time where I have examined the records in the case of a final proof.

Q. But you had such an examination made in your office as satisfied you as to the correctness of the proof?

A. Yes, sir.

Q. And the correctness of the proceeding had by the entryman in making his entry?

A. Yes, sir, the chief clerk does that. I wish to say that the clerk acts as the chief clerk. We have no chief clerk in the land office here. Mr. Deering, I refer to. He examines the records to see if these papers in the entries including the final certificates, the final proof, and final receipts are correct and ready for my signature.

Q. I will ask you if this is done in pursuance of the rules of your office? A. Yes, sir; it is.

Q. There seems to be a different rule observed here from that observed in the Missoula land office requiring a payment to be made when a timber and stone sworn statement is made. What is the practice in your office?

A. The practice now is not to require such payments. At the time these entries were made our instructions from the attorney general's office were to require a deposit of ten dollars.

Q. For what purpose was this ten dollars deposit?

A. I haven't the remotest idea. We received later of

(Testimony of George D. Greene.)

instructions that in the event that the person filing fails to make final proof, the ten dollars should be returned to him. So we could see no reason for collecting it. It wasn't to pay for any papers, or anything of the kind, but it was a land office fee so as to avoid making entries in the receiver's books, we ceased to collect the ten dollars at the time the original entry was filed, but only collected it when the final proofs were complete. I don't think there is any difference in the practice of our office and the Missoula office in that regard.

Q. Then at this time, the practice in your office, and in the Missoula office is the same?

A. Yes, sir; in that regard.

Q. Then all of these papers, which appertain to the particular entry, are examined in your office, and are passed upon by someone in your office to ascertain the correctness of the papers and the correctness of the steps which precede the final entry of the land, and the approval thereof.

A. Yes, sir. I would like to add a word further, and that is, when I took the final proof, as I always did in these cases, when I was in the office, that I turned the matter right over to the chief clerk, the final proof. We did that with the record, and he issued the final receipt and final certificate in cases like that.

Q. Can you tell me when it was that the entry of Charles Clontier, or John Gilles was certified to patent?

A. That is, when final certificate issued in our office.

Q. Well, not that; but there was an endorsement upon

(Testimony of George D. Greene.)

these papers showing that the examination has been in the general land office when the entry has been approved and has been certified to the proper department for the issuance of patent. Can you tell me the date when that happened in each of these cases?

A. Well, that is something I never examined to determine before.

By Mr. BICKFORD.—Will you assist, Mr. Hershey?

By Mr. HERSHEY.—Yes, sir.

By Mr. HERSHEY.—You will find it endorsed, Mr. Greene, on the receiver's receipt, the date of approval.

By the WITNESS.—Yes; in Charles Cloutier's case, it was approved December 20th, 1899.

Q. That you ascertained from the endorsement upon the exterior of the paper? A. Yes, sir.

Q. Where were those endorsements made if you know?

A. Must have been made in Division C of the general land office.

Q. Now, will you give me the date when the entry was approved by the officers of the general land office in the entry of John Gilles?

A. I don't think that that has been approved yet. I don't think patent has issued either. It isn't marked approved, and it isn't marked "Patent issued."

Q. Now, I will ask you if such an endorsement is found upon the papers of Charles Cloutier?

A. Yes; that is the one I have just read from.

Q. It is?

(Testimony of George D. Greene.)

A. Yes; approved December 20th, 1900.

Q. And what is the date when patent was issued?

A. February 2d, 1900. Recorded in Vol. 32, page 225, records of the general land office.

Q. Now, to go on to the next entry, after that made by Charles Cloutier.

A. The next is cash entry No. 6134, made by Martha M. J. Doney on August 14th, 1899, for the north half of the northeast quarter of section 10, township 15 north range 12 west.

Q. Is that the final receipt that you read from?

A. Yes, sir; that is the final receipt.

Q. The final receipt? A. Yes, sir.

Q. Now, what was the date of her entry?

A. August 10th, 1899.

Q. What was the date of final proof?

A. The final proof was taken on the same day.

Q. Well, then when was her sworn statement filed?

A. Well, the only drawback to that is that they go by the cash entry, and not by the sworn statement.

By Mr. MAYNARD.—If you will just state the date of the sworn statement and the names of the witnesses at the same time.

A. Edward D. Doney, sworn statement is mixed up with this one.

Q. We are talking now of the entry of Martha J. Doney.

A. I know. I was looking for it. I see the papers have got mixed. The sworn statement of Martha J.

(Testimony of George D. Greene.)

Doney was filed in the Helena land office May 27th, 1899.

Q. Who were the witnesses?

A. Mary J. McLane, Martha J. Doney, Robert Dixon and Henry Faust of Ovando.

Q. What witnesses appeared to testify in her behalf at the time of her final proof?

A. That was evidently the way it was given to the clerk here that was in the land office then.

Q. Well, we will fix that date by further cross-examination. Now, who were the witnesses that actually appeared at the land office to testify in her behalf?

A. Henry Faust and Robert Dixon.

Q. I will ask you to state if in making this final proof the questions propounded to the claimant and to the witness were the same as those propounded in the entry of Charles Cloutier?

A. Yes, sir; the same blanks were used.

Q. I will ask you to state whether or no the testimony was substantially the same in that case as in the Cloutier case? A. Yes, sir; substantially the same.

Q. Now, upon the entry of Martha M. J. Doney.

By Mr. MAYNARD.—In each case were the final proofs made and the receiver's final receipt issued on the same day? A. Yes, sir.

Q. In each and every case?

A. In each and every case the final proofs and the receiver's receipt were issued on the same day.

By Mr. BICKFORD.—Now, the endorsement found

(Testimony of George D. Greene.)

upon the entry, when did it appear that this entry was finally approved in the general land office?

A. March 7th, 1900.

Q. When was patent issued in that case?

A. April 12th, 1900.

Q. And the money for the land had been paid at what time, Mr. Greene?

A. Paid on the day when the entry was made, August 14th, 1899.

Q. Now, go on to the next entry, Mr. Greene.

A. The next is cash entry No. 6135 by Edward D. Doney.

By Mr. MAYNARD.—That is Edward D. Doney, you say? A. Yes, sir.

Q. When was his sworn statement filed, Mr. Greene?

A. His sworn statement was filed May 27th, 1899.

Q. Who were the witnesses named by him?

A. The witnesses named by him were Mary J. McLane, Martha M. J. Doney, Robert Dixon and Henry Faust of Ovando.

Q. What witnesses appeared to testify before the land office at the time of his making his final proof, and what was the date of the final proof?

A. Robert Dixon and Henry Faust were the witnesses who testified. The proof was made on the 14th day of August, 1899.

Q. Are the questions the same in this case, as in the cases you have already testified to?

A. Practically the same; yes, sir.

(Testimony of George D. Greene.)

Q. I will ask you to say whether the answers are practically the same in this case as the answers were in the other cases that you have testified about?

A. Yes, sir; the answers are to the same effect.

Q. Now, when was the entry?

By Mr. MAYNARD.—Mr. Greene, I wish before you would answer that question you would look over the testimony and see whether such is the fact or not.

By the WITNESS.—Of course, if you are willing to take the time, but I am familiar with them.

By Mr. MAYNARD.—Yes, to do it; it won't take you but a moment to see if there are any peculiarities about the testimony.

By the WITNESS.—Very well.

By Mr. BICKFORD.—When was this case that you have just testified about approved in the land office?

A. December 21, 1899.

Q. When was the patent in that case issued?

A. February 2d, 1900.

Q. Now, I will ask you to pass on to the next case, Mr. Greene.

A. The next one is Cash Entry No. 6136, made by Thomas Pelky.

Q. When was his sworn statement filed?

A. His sworn statement was filed May 27th, 1899.

Q. Who were the witnesses named by him?

(Testimony of George D. Greene.)

A. His witnesses were B. Frank Chattin, T. A. Price, C. L. Griswold and David Morris.

Q. Will you please state what witnesses appeared to testify for him at the time of his final proof?

A. Chauncey L. Griswold and B. Frank Chattin.

Q. Were the questions propounded to the witness in this case the same as those propounded in the other cases that you have testified about?

A. Yes, sir; the same blanks were used.

Q. I will ask you to state whether or no the testimony given in the cases was practically the same as the testimony given in the other cases concerning which you have testified?

A. Yes, sir; the testimony was to the same practical effect.

Q. When was this case approved for patent in the general land office?

By Mr. MAYNARD.—What was the date of the final proof in that case?

A. August 4th. Let me see, I think, that was August 4th. No, it wasn't; it was August 15th.

By Mr. MAYNARD.—1899?

By the WITNESS.—1899; yes, sir.

A. It was approved for patent December 21st, 1899, and patent was issued therefor, February 2d, 1900.

Q. Now, in each instance where you testify here, Mr. Greene, the receiver's final receipt was issued on the same day that final proofs were made?

A. Yes, sir; on the same day.

(Testimony of George D. Greene.)

Q. Now, will you pass to the next entry, Mr. Greene?

A. The next entry is Cash Entry No. 6137 by B. Frank Chattin.

Q. What is the date of his sworn statement?

A. The date of his sworn statement is May 27th, 1899.

Q. Who were the witnesses named by him in his advertisement?

A. Thomas Pelky, T. A. Price, C. L. Griswold and David Morris.

Q. Who were the witnesses that appeared to testify at the time of his final proof?

A. C. L. Griswold and B. Frank Chattin.

Q. Were the questions propounded in that case the same as those that were propounded in the other cases concerning which you have testified?

A. The same questions were propounded; yes, sir.

Q. I will ask you to state whether or no the answers to the questions propounded were similar in effect, or the same as those in the other cases, about which you have testified?

A. They were to the same practical effect; yes, sir.

Q. On what day was the final receipt issued in that case? A. On August 15th, 1899.

Q. Was it the same day upon which final proof was made? A. Yes, sir; the same day.

Q. I will ask you to state when, if at all, this entry was approved by the officers of the general land office?

A. December 21st, 1899.

Q. When was it that patent was issued?

(Testimony of George D. Greene.)

A. February 2d, 1900.

Q. What is the next entry that you have there, Mr. Greene? A. The next is Cash Entry 6161.

Q. By whom was it made? A. Elijah W. Hoyt.

Q. Who were the witnesses named by him?

A. The witnesses in final proof was Charlie Hoyt, Albert Muchmore, H. C. McNally and Minnie B. Hunsecker.

Q. Who were the witnesses who appeared and testified on behalf of claimant on final proof?

A. Charlotte S. Hoyt and H. C. McNally.

Q. Were the questions propounded to the claimant in that case and to the witnesses the same as to these people in the other cases about which you have testified?

A. The same questions were propounded; yes, sir.

Q. And were the answers practically the same as those given in the other cases testified to by you?

A. Yes, sir; the answers were practically to the same effect.

Q. I will ask you to state what the date was when this entry was approved by the officers of the general land office?

A. It doesn't appear to have been approved. There appears to have been a conflict with some Indian allotments.

By Mr. MAYNARD.—With what?

By the WITNESS.—With Indian allotment No. 145.

Q. In what does that appear?

A. That appears by a notation made at the general land office on the back of the certificate. Those allot-

(Testimony of George D. Greene.)

ments were made when the land was unsurveyed, and no entry made on the plat because there was none and when the land became surveyed, it appeared vacant.

Q. Now, I will ask you to state whether or not it appears from this entry that patent has ever issued in this case? A. It does not.

Q. Does it appear that any proof of the entry has been made at the general land office?

A. No, sir.

Q. Does any reason appear for the nonapproval of the entry except the one that you have already mentioned?

A. I know of no reason except that.

By Mr. MAYNARD.—What kind of land is that?

A. Indian allotment land. An Indian has a right to so many acres of land for the children. Eighty acres for the children that are not grown up and 160 acres for the children that are grown up.

Q. How many of these cases were under Indian allotments?

A. Why, none of these were Indian allotment except this one which conflicted with an Indian's allotment. You understand the Indian allotments had been made when the land was unsurveyed, and they had filed their allotment for that much unsurveyed land, and then when the land was surveyed we had no record of that that we could find and so we treated all the land as being vacant, and when they made application to take this under the Stone and Timber Act, there was noth-

(Testimony of George D. Greene.)

ing down here at all to show a prior appropriation, and so we allowed the entry, and when it went down to the general land office, they discovered a conflict there and made a notation on the papers as is done in this case, and that held up the patent.

Q. Do you know how many of these cases there were, in which entries were made under the Stone and Timber Act, and a conflict occurred with these Indian allotments?

A. I don't know there was any other. I think this is the only one.

Q. What is the next entry, Mr. Greene?

By Mr. MAYNARD.—I would like to have the fact noted, if there is no objection, that during the season of 1899, Mr. Greene was so crowded with work that he worked all the time from eight o'clock in the morning until six o'clock at night.

By the WITNESS.—Yes, I worked from eight o'clock in the morning until six o'clock at night a good part of time, but I wasn't there until six all the time because I was tired out at five o'clock, and didn't feel like working any longer, but I worked until six o'clock a great deal of the time and quite often in the evening. I took nearly all the contest work at my home in the evenings. Worked on the contest proofs for the purpose of getting the work caught up at the office.

By Mr. BICKFORD.—I want to say that in his examination in chief, Mr. Greene testified with reference to that.

(Testimony of George D. Greene.)

By the WITNESS.—Yes, so many plats of surveys had been accepted, and approved that it made a great deal of extra work at the land office. So many additional entries were made and that added to the work very materially. The year ending, June 30th, 1897, 1786 entries of all kinds were made, and during the year ending June 30th, 1900, 5014 entries of all kinds were made; we had a small clerical force. You see the work increased threefold, but we had no additional clerical force, and that made it quite hard on us.

Q. What is the next entry, Mr. Greene?

A. No. 6162, by Charlotte S. Hoyt.

Q. What is the date of her sworn statement?

A. June 6th, 1899.

Q. Who were the witnesses named by her?

A. The witnesses named on her final proof are Charlotte S. Hoyt, Elijah W. Hoyt, Albert Muchmore, Minnie V. Hunsuker, and H. C. McNally.

Q. I will ask you to state whether or no the notices that were given here in this case was what is called a combination notice?

A. That is what we call a consolidated notice.

Q. Or a consolidated notice, yes? A. Yes, sir.

Q. And is the notice for final proof for herself and who else?

A. Elijah W. Hoyt and Minnie V. Hunsecker, and this claimant.

Q. I will ask you to state who the witnesses were that appeared at the time of her final proof?

(Testimony of George D. Greene.)

A. Elijah W. Hoyt, and H. C. McNally were the witnesses who appeared and testified.

Q. And what was the date of her final proof in that case?

A. The 31st day of August, 1899.

Q. Now, the questions propounded to the claimant and her witnesses were the same as those propounded in the other cases that you have testified to?

A. They were the same.

Q. Was the testimony given on her final proof the same in effect as the other testimony given in the cases you have already testified to?

A. Yes, to the same practical effect.

Q. Now, I will ask you to state whether or not the entry of Charlotte W. Hoyt was afterwards approved by the general land office, and if so, the date of such approval?

A. Yes, sir, it was approved December 22, 1899.

Q. And when was patent issued in that case?

A. Patent was issued February 2, 1900.

Q. Pass on to the next one, Mr. Greene, what is the next entry?

A. The next entry is No. 6164, of Albert F. Muchmore.

Q. Who were the witnesses named by him?

By Mr. MAYNARD.—Has he given the date of the sworn statement?

By Mr. BICKFORD.—No, he has not yet.

Q. You may do so, Mr. Greene.

(Testimony of George D. Greene.)

A. The sworn statement was made June 6th, 1899. And the witnesses who were advertised were Henry C. McNally, Oliver E. Muchmore, Guy W. Muchmore, Albert F. Muchmore and Elizabeth A. Muchmore.

Q. I want to know of you whether this is a consolidated notice or whether it was a straight notice?

A. It was a consolidated notice.

Q. Who were the other claimants given in the notice?

A. The other claimants were Henry C. McNally, Oliver E. Muchmore, Guy W. Muchmore, Albert F. Muchmore and Eliza A. Muchmore.

By Mr. MAYNARD.—Were all of those witnesses?

By the WITNESS.—In one notice, yes, sir.

Q. What is the object, Mr. Greene, of having this notice printed in that way?

A. It saves one-half in publication—in the cost of the publication of the notice. Our instructions from the general land office are to consolidate such notices as can be readily consolidated.

Q. Isn't it also true that it is also for the purpose of saving the expense of making a number of trips to the land office, by different people from long distances?

A. Well, the expense would be the same if the notices were separated, but the expense of publication is one-half according to the rules in this district where they are consolidated. That is the first name is fifteen dollars, and seven dollars and a half for each subsequent name. It makes quite a saving to a poor person.

(Testimony of George D. Greene.)

Q. Who were the witnesses who appeared?

By Mr. MAYNARD.—There were how many claimants in that case?

By the WITNESS.—I think there was five—four or five; let us see. Five names; yes, sir.

By Mr. MAYNARD.—Five claimants, and how many witnesses named?

By the WITNESS.—The witnesses were five: let us see, one, two, three, four, five—five witnesses. You see they use the same witnesses in every case. The same rule applies in all entries where the witnesses are the same. They are always consolidated in homestead and desert claims, when they conveniently can be.

Q. Now, I will ask you to state what was the date of her final proof?

A. September 1st, 1899.

Q. And who were the witnesses in his behalf?

A. Guy W. Muchmore and Henry C. McNally testified in his behalf.

Q. Were the questions propounded to the claimant and to her witnesses the same as those propounded in the other cases that you have testified concerning?

A. Yes, sir, the questions were the same.

Q. I will ask you to state with reference to the answers. Were they not to the same effect as those in the other cases about which you have testified?

A. They were to the same effect, yes, sir.

Q. Well, will you please give us the date when the final certificate was issued?

(Testimony of George D. Greene.)

A. Final certificate was issued the first of September.

Q. When was the entry approved by the general land office? A. December 22, 1899.

Q. And patent was issued when?

A. February 2, 1900.

Q. What was the next entry?

A. Cash Entry No. 6165, by Guy W. Muchmore.

Q. What was the date of the next entry?

A. The date of this entry was September 1, 1899.

Q. Who were the witnesses named by Guy W. Muchmore in his published notice?

A. Yes, Henry C. McNally, Elizabeth E. Muchmore, Guy W. Muchmore, Albert F. and Oliver E. Muchmore.

Q. What witnesses appeared and testified in his behalf at the time of his making final proof?

A. Henry C. McNally and Albert F. Muchmore.

Q. Were the questions propounded to the claimant and his witnesses the same as those propounded in the other cases to which you have testified concerning?

A. Yes, the same questions.

Q. And was the testimony given substantially the same, and to the same effect as the testimony you have testified was given in the other cases?

A. Practically to the same effect.

Q. What was the date of the final proofs in that case? A. September 1st, 1899.

Q. What was the date the final certificate was issued?

(Testimony of George D. Greene.)

A. The same day, the 1st of September, 1899.

Q. When was the sworn statement made in that case?

A. The sworn statement was made June 6th, 1899.

Q. Well, now with reference to final receipt, you say that was issued on September 1st, 1899?

A. Yes, sir.

Q. When was this entry approved for patent in the general land office?

A. December 22, 1899.

Q. Now, I will ask you to state when it was that patent actually issued in that case?

A. February 2d, 1900.

Q. What is the next entry that was made in your office?

A. The next entry was cash entry, No. 6166, by Oliver E. Muchmore.

Q. What is the date of his sworn statement?

A. June 6th, 1899.

Q. What land was embraced in his sworn statement?

A. The southeast quarter of section 12, township 15 north, range twelve west.

Q. Who were the witnesses who were advertised to appear at the final proof for this claim?

A. The same witnesses as before, Henry C. McNally, Oliver E. Muchmore, Guy E. Muchmore, Albert F. Muchmore, and Elizabeth A. Muchmore.

Q. And what witnesses appeared and testified in his behalf at the time when final proof was made?

(Testimony of George D. Greene.)

A. Albert F. Muchmore and Guy W. Muchmore.

Q. I will ask you to state whether or not the same questions were propounded in this final proof to the claimant and to the witnesses as those propounded in the cases to which you have already testified?

A. They were.

Q. Were the answers in substance the same and to the effect the same? A. They were.

Q. What was the date the final proof was made?

A. The date of the final proof was September 1st, 1899.

Q. I will ask you to state whether or no, this entry was ever approved at the general land office, and if so, when? A. Yes, sir, December 22, 1899.

Q. When was patent issued?

A. February 2d, 1900.

Q. Go on with the next one?

A. The next is cash entry No. 6167. Elizabeth A. Muchmore.

Q. Upon what date was the sworn statement made?

A. The sworn statement was made June 6th, 1899.

Q. For what land?

A. For the northeast quarter of the southeast quarter, the east half of the northeast quarter and the northwest quarter of the northeast quarter of section 14, township 15 north, of range 12 west, of the principal meridian of Montana.

Q Who were the witnesses mentioned in the published notice?

(Testimony of George D. Greene.)

A. The same witnesses who appeared in the other case.

Q. Well, that is the one preceding this one?

A. Yes, sir.

Q. What witnesses appeared at the time of final proof in this case and testified for the claimant?

A. Guy W. Muchmore and Albert F. Muchmore.

Q. What was the date of the final proof?

A. September 1st, 1899.

Q. Were the questions propounded in this case the same as those propounded in the other cases about which you have testified? A. Yes, sir, the same.

Q. And were the answers to the same effect and purport as the answers in the other cases that you have mentioned in your testimony?

A. Yes, sir, they appear to be.

Q. And upon what date was final receipt issued?

A. Final receipt was issued September 1st, 1899.

Q. When was this entry approved by the general land office, the patent?

A. December 22, 1899.

Q. And when was patent issued?

A. February 2d, 1900.

Q. Now, go on and give us the next cash entry, Mr. Greene?

A. The next cash entry is No. 6173, of Albert Stewart.

Q. What is the date of his sworn statement?

A. The sworn statement was made June 20, 1899.

(Testimony of George D. Greene.)

Q. Give us the description of the land, Mr. Greene, from the statement?

A. The northeast quarter of section 18, township 15 north, range 12 west.

Q. What witnesses were advertised to appear for him?

A. The witnesses advertised in this case were Albert Stewart and Chauncey L. Griswold, Louis A. Jakways, Chas. A. Jakways, and Nels O. Opsata.

By Mr. MAYNARD.—What case is that, Mr. Greene?

By the WITNESS.—Alfred Stewart. This is another consolidated notice.

By Mr. MAYNARD.—The one before that was Elizabeth A. Muchmore?

A. Yes, sir.

By Mr. MAYNARD.—And this is Albert Stewart?

A. Yes, sir.

Q. And who were the witnesses, Mr. Greene?

A. Alfred Stewart, Louis A. Jakway, Charles A Jakway and Nels Opsata.

Q. What are the names of the witnesses who appeared for the claimant at the time of taking the final proof and testified in behalf of the claimant?

A. Louis A. Jakway and Nels Opsata.

Q. When was the final proof made?

A. The final proof was made the 6th day of September, 1899.

Q. Are the questions propounded in that case the

(Testimony of George D. Greene.)

same as those propounded in the other cases about which you have testified? A. They are.

Q. And were the answers to the same effect as the others?

A. To the same practical effect, yes.

Q. What is the date of the final certificate in this case? A. September 6th, 1899.

Q. When was the case approved at the general land office? A. February 3d, 1900.

Q. And when was patent issued, Mr. Greene?

A. Patent was issued April 12th, 1900.

Q. Please state what the next entry was, Mr. Greene?

A. Nels Opsata made Cash Entry No. 6174.

Q. What is the date of the sworn statement?

A. Sworn statement was made June 20th, 1899.

Q. And for what description of land?

A. The southeast quarter of section 2, township 15 north, of range 13 west.

Q. Who were the witnesses?

A. The witnesses were Albert Stewart, Chauncey L. Griswold, Louis A. Jakway, Charles A. Jakway and Nels Opsata.

Q. Now, will you kindly state what witnesses appeared to testify in his behalf?

A. Alfred Stewart and Louis A. Jakway.

Q. Were the questions propounded in this case to the same effect as those propounded in the other cases?

A. The same questions, yes, sir.

(Testimony of George D. Greene.)

Q. Were the answers the same, practically as in the other cases?

A. The answers were to the same effect practically; yes, sir.

Q. What was the date of the final certificate in that case? A. September 6th, 1899.

Q. There appears to be in connection with those papers some paper which is out of the ordinary run. Will you please explain to the Court what that is?

A. Well, I don't know much about it. It is what they call Military Bounty Warrants, I think.

Q. Is that such a paper as is filed in the land office?

A. Yes, sir.

Q. That is in lieu of the payment of cash?

A. Yes, to the extent of its value.

Q. It isn't the certificate that is attached—what does that indicate to you, that the owner of the certificate is entitled to receive from the Government of the United States 160 acres of land? A. Yes, sir.

Q. Irrespective of the Timber and Stone Act?

A. Well, to the value I believe of a dollar and a quarter an acre.

Q. To the value of a dollar and a quarter an acre?

A. Yes, sir.

Q. Then this would be received for 160 acres, which under the laws of the United States could be purchased for $1.25 an acre or it could be credit upon any other entry of the kind at the rate of $1.25 per acre?

A. Yes, sir.

Testimony of George D. Greene.)

Q. What is the date of the final receipt in this case?

A. September 6th, 1899.

Q. What is the date, do you say?

A. September 6th, 1899.

Q. What is the date when this entry was approved by the general land office?

A. It was approved August 9th, 1900.

Q. When was the patent issued in this case?

A. September 7th, 1900.

Q. What is the next entry you have there, Mr. Greene?

A. The next is cash entry No. 6184, by John B. Catlin.

Q. There was another question I didn't ask you with reference to the former entry of Nels Opsata. I will ask you to state whether or no the questions propounded to the claimant and the witnesses in the case of Nels Opsata was the same as those propounded in the other cases to which you have referred?

A. They are the same.

Q. And are the answers practically to the same effect as in the other cases to which you have testified?

A. Yes, sir, the same, practically to the same effect.

Q. What is the case that you have there now?

A. 6184, by John B. Catlin.

Q. Who were the witnesses named by Mr. Catlin?

A. The witnesses named are Steven Tepper, C. L. Griswold, Thomas B. Bryan and Leonard Barrett.

Q. Who were the witnesses who appeared for John B. Catlin?

(Testimony of George D. Greene.)

A. Hadn't we better put in the sworn statement?

Q. Yes, what is the date of the sworn statement, and what land was applied for by him?

A. The sworn statement was made July 1st, 1899, for the west half of the northwest quarter and the west half of the southwest quarter, being lots 4, 5, 6, and 7, of section 6, township 15 north, of range 14 west.

Q. What witnesses appeared to testify for him at the time of his making final proof?

A. Steven Tepper, C. L. Griswold, Thomas B. Bryan and Leonard Barrett.

Q. Those were the witnesses named by him?

A. Those who appeared at the final proof?

Q. Yes, sir.

A. Leonard Barrett and C. L. Griswold.

Q. What is the date of the final proof?

A. The 14th of September, 1899.

Q. What is the date of the issuance of the final receipt? A. September 14th, 1899.

Q. Were the questions propounded to the claimant and his witnesses the same in this case as they were in the other cases that you have testified about?

A. Yes, sir, the same.

Q. And was the testimony given upon the final proof, in effect the same as the testimony given in the other cases about which you have testified?

A. It was to the same practical effect, yes, sir.

Q. I will ask you to tell when it was that this entry was approved by the general land office?

(Testimony of George D. Greene.)

A. December 27th, 1899.

Q. When was patent in that case issued?

A. February 2, 1900.

Q. What is the next entry you have there?

A. The next entry is Cash Entry No. 6185, by Belle Bryan.

Q. Who were the witnesses for Miss Bryan?

A. I suppose we had better give the sworn statement first, hadn't we, the date of the filing of the sworn statement?

Q. Yes.

A. The sworn statement was filed in this case, June 26th, 1899, the west half of the southeast quarter, and the southwest quarter of the northeast quarter, and the southeast quarter of the southwest quarter of section 6, township 15 north, range 14 west, of the principal meridian of Montana.

Q. Who were the witnesses named to appear for her at the date of the final proof?

A. The witnesses were Edgar Lehman, Lelia T. Bryan, Belle Bryan, John Gilles and C. L. Griswold.

Q. What kind of a notice was that?

A. This was also a consolidated notice.

Q. I will ask you to tell whether or no—what the names of the witnesses were who appeared at the time of her making the final proof and testified in her behalf?

A. Edgar Lehman and Chauncey L. Griswold.

Q. Were the questions propounded to these wit-

(Testimony of George D. Greene.)

nesses the same as those questions propounded in the other cases concerning which you have testified?

A. They were the same questions, yes, sir.

Q. I will ask you if the testimony given by these witnesses, and the testimony of the claimant was practically the same in this case as in the other cases about which you have testified and to the same force and effect?

A. To the same practical effect, yes, sir.

Q. What is the date of the final proof?

A. The 14th of September, 1899.

Q. And was the final certificate issued on the same day?

A. On the same day that the proof was taken, yes.

Q. I will ask you to tell whether or not this entry was approved by the general land office, and if so, on what date?

A. Yes, sir, it was approved on the 22d day of December, 1899.

Q. And upon what date was patent issued?

A. The 2d of February, 1900.

Q. What is the next entry you have there?

A. The next entry is Cash Entry No. 6186, by Leonard Barrett. The sworn statement was made July 1st, 1899.

Q. Covering what land?

A. The east half of the northwest quarter and the northwest quarter of the northeast quarter and the

(Testimony of George D. Greene.)

northeast quarter of the southwest quarter of section 6, township 15 north, of range 14 west.

Q. And who were the witnesses named?

A. Thomas B. Bryan, Steven Tepper, Chauncey L. Griswold and John B. Catlin.

Q. What was the date of her final proof?

A. September 14th, 1899.

Q. And who were the witnesses that testified in behalf of the claimant, Leonard Barrett?

A. John B. Catlin and Chauncey L. Griswold.

Q. Were the questions propounded in this entry the same as those propounded in the other entries about which you have testified?

A. The same questions.

Q. I will ask you to state whether or no the answers given were practically same, or to the same force and effect as those given in the other cases mentioned by you in your testimony?

A. They were to the same practical force and effect.

Q. What was the date of the final certificate issued in that case? A. September 14th, 1899.

Q. And when was the entry approved by the general land office? A. December 26, 1899.

Q. Patent issued when?

A. February 2, 1900.

Q. What is the next entry you have?

A. The next entry is Cash Entry 6187, by Edgar Lehman.

Q. What was the date of his sworn statement?

(Testimony of George D. Greene.)

A. The date of his statement was June 26, 1899.

Q. And for what land was the entry made?

A. For lot 1, the southeast quarter and the northeast quarter and the east half of the southeast quarter of section 6, township 15 north, range 14 west.

Q. Who were his witnesses?

A. Edgar Lehman, Thomas Bryan, Belle Bryan, John Gilles, and Chauncey L. Griswold.

Q. Was this a consolidated notice?

A. Yes, sir, it was.

Q. Who appeared as witnesses at the time of making final proof?

A. Lelia T. Bryan and C. L. Griswold.

Q. Were the questions propounded on this final proof the same as those propounded in the various cases about which you have testified?

A. Yes, sir, the same.

Q. And the purport of the testimony was the same as in the other cases mentioned in your testimony?

A. Yes, sir, to the same practical effect.

Q. I will ask you to state what the date of the final receipt is in this case?

A. September 14th, 1899.

Q. That was the entry approved by the officers of the general office? A. Yes, sir.

Q. What was the date of that?

A. December 26, 1899.

Q. When was patent issued in this case?

A. Patent issued February 2, 1900.

(Testimony of George D. Greene.)

Q. What is the next entry, Mr. Greene?

A. The next is Cash Entry No. 6188, by Lelia T. Bryan.

Q. What is the date of her sworn statement?

A. The date of her sworn statement is June 26th, 1899.

Q. And the description of the land embraced in that entry is what?

A. The northwest quarter of section 24, township 15 north, range 14 west.

Q. And who were the witnesses named?

A. The witnesses advertised to make final proof are Edgar Lehman, Lelia T. Bryan, Belle Bryan, John Gilles and C. L. Griswold.

Q. Was that a consolidated notice?

A. It appears not to have been, but I will look and see. Yes; it was a consolidated notice.

Q. What witnesses appeared to testify at the time of the final proof?

A. Edgar Lehman and C. L. Griswold.

Q. Were the questions propounded in that case the same as those propounded in the other cases that you have referred to? A. The same questions.

Q. Were the answers to the same force and effect as those in the other cases that you have testified to?

A. They appear to be.

Q. What is the date of the final receipt?

A. The date of the final receipt is September 14, 1899.

(Testimony of George D. Greene.)

Q. When was this entry approved by the general land office? A. March 27th, 1900.

Q. And the patent issued September 7th, 1900?

A. Yes; September 7th, 1900.

Q. What is the next entry that you have there?

A. The next entry is Cash Entry No. 6190, by Mrs. May Hawthorne.

Q. And what is the date of her sworn statement?

A. Her sworn statement was made July 8th, 1899.

Q. And for what land is it?

A. For lots one and two and the south half of the northeast quarter of section 4, township 15 north, range 12 west.

Q. Who were her witnesses?

A. The witnesses were Louis S. Jakway, Nels Opsata, Alfred Stewart and Chauncey L. Griswold.

Q. What witnesses appeared to testify in her behalf at the time of the final proof?

A. Louis S. Jakway and Chauncey L. Griswold.

Q. Were the questions propounded in this case the same as those you have testified were propounded in the other cases?

A. They were to the same force and effect; yes, sir.

Q. I will ask you to tell whether the purport of the testimony was the same as those other cases, and if it was to the same purport and effect.

A. The purport was the same; yes, sir.

Q. And what was the date of the final receipt in this case? A. September 16th, 1900.

(Testimony of George D. Greene.)

Q. And what date was the entry approved by the general land office?

A. The entry was approved August 9th, 1900.

Q. And patent was issued when?

A. Patent issued September 7th, 1900. There is some more of the script here.

Q. Was there any special feature of this entry differing from the others with reference to the payment, or that sort of thing?

A. No; it was of the same kind. The value of the scrip was placed to the credit of the applicant.

Q. Will you tell what kind of script it was paid with, the script that you refer to?

A. Military Bounty Land Script.

Q. What is the next entry that you have there, Mr. Greene? A. It is Cash Entry No. 6269 by Levy Cyr.

Q. What is the date of his sworn statement to the land?

A. The sworn statement is dated September 25, 1899.

Q. And what is the description of the land?

A. The northeast quarter of section 18, township 16 north, range 14 west.

Q. What witnesses did he name as his witnesses at the time of the final proof?

A. Well, there appears to be one of these papers misplaced somewhere. I suppose I will have to go through the whole pile to get that.

Q. What paper is it?

A. It is the one containing the witnesses' testimony.

(Testimony of George D. Greene.)

Oh, no; I have it; it is here all right. Vital Cyr and J. B. Seeley were the witnesses.

By Mr. MAYNARD.—Who were the ones that were named in the advertisement, Mr. Greene?

A. Oh, that is what you want. J. B. Sedey, George Hammond, William Boyd, and Vital Cyr.

Q. George B. Seeley is that?

A. No, it is J. B. Seeley—Jasper B. Seeley.

Q. Vital Cyr, and J. B. Seeley were the witnesses who testified?

A. Yes; Vital Cyr and J. B. Seeley were the witnesses who appeared at the time of making final proof.

Q. Were the questions propounded to the witnesses in this case the same questions that were propounded to the witness in the other cases?

A. They were the same questions; yes, sir.

Q. And were the answers to the same effect as those given in the other cases?

A. They were to the same practical effect; yes, sir.

Q. I will ask you to state if this entry was ever approved by the general land office, and if so when?

A. Yes, sir; it was approved September 21, 1900.

Q. When was patent issued?

A. Patent was issued November 28th, 1900.

Q. What is the next entry that you have there, Mr. Greene?

A. The next entry is Cash Entry No. 6268. Well, we had that before.

Q. Well, that don't make any difference

(Testimony of George D. Greene.)

A. Well, I commenced at the bottom of this other pile instead of at the top. The next is Cash Entry No. 6268 by Vital Cyr. We have not had that before.

Q. Well, then, what is the date of the sworn statement in that case, Mr. Greene?

A. The sworn statement, September 25, 1899.

Q. And for what land?

A. The northwest quarter of section 18, township 16 north, range 14 west.

Q. Who were the witnesses named by him?

A. The witnesses named in the final proof were J. B. Seeley, George Hammond, William Boyd, and Levy B. Cyr.

Q. Who were the witnesses that appeared at the time that final proof was made to testify in his behalf?

A. The witnesses who testified in this case were Levy B. Cyr, and J. B. Seeley.

Q. Were the questions propounded to the witnesses for the claimant in this case the same questions that were propounded to the claimant and the witnesses in the other cases that you have testified about?

A. The same questions; yes, sir.

Q. The same questions, you say, as those embraced in the other cases? A. Yes, sir; the same questions.

Q. Were the answers to the same effect as in the other cases? A. To the same practical effect; yes, sir.

Q. What was the date of the final certificate in this case? A. December 18th.

Q. 1900? A. No, sir; 1899.

(Testimony of George D. Greene.)

Q. When was this entry approved by the general land office? A. August 10th, 1900.

Q. And patent issued upon what date?

A. Patent issued September 7th, 1900.

Q. What is the next entry that you have there, Mr. Greene?

A. The next entry is Cash Entry No. 6227.

Q. By whom was that entry made?

A. By Lizzie Dodd.

Q. What witnesses did she name?

A. She named Marion B. Watson, Harrison Dodd, Mathilde Dodd, and Hiram Dodd.

Q. What witnesses appeared for her at the time she made final proof?

A. We have overlooked the sworn statement.

Q. Oh, yes; what is the date of the sworn statement?

A. The sworn statement was made July 29th, 1899.

Q. And what was the description of the land embraced in the entry?

A. The southwest quarter of the northwest quarter and the west half of the southwest quarter and southeast quarter, southwest quarter of section 6, township 14 north, range 13 west.

Q. Who were her witnesses, who were the witnesses advertised for her, I should say?

A. The witnesses advertised for her?

Q. Yes; I wish you would give them.

A. Yes; Marion B. Watson, Harrison Dodd, Mathilde Dodd, and Hiram Dodd.

(Testimony of George D. Greene.)

Q. And who appeared as her witnesses at the time of the making of the final proof?

A. Marion B. Watson and Hiram Dodd.

Q. Were the questions propounded to the witnesses and the claimant in that case the same as those propounded to the other witnesses and claimant in the cases concerning which you have testified?

A. Yes, sir; the same questions.

Q. And were the answers given to the questions in effect the same as those in the other cases that you have testified about?

A. They were to the same practical effect; yes, sir.

Q. What was the date of the final receipt in her case?

A. Final receipt is dated October 19th, 1899.

Q. And when was the entry approved by the general land office? A. August 7th, 1900.

By Mr. MAYNARD.—When was that with reference to the final receipt?

A. The final receipt issued in October, 1899, and it was approved, August 7th, 1900.

Q. What was the date of the patent?

A. The date of the patent? Patent issued September 7th, 1900.

Q. What was the next case, Mr. Greene?

A. The next entry was Cash Entry 6226.

Q. By whom was that? A. By Mathilde Dodd.

Q. What is the date of her sworn statement?

A. Her sworn statement was made July 29th, 1899.

Q. And for what land was the entry made?

(Testimony of George D. Greene.)

A. The west half of the northeast quarter and the south half of the northwest quarter of section 18, township 14 north, range 13 west.

Q. And who were her advertised witnesses?

A. Her advertised witnesses were Hiram Dodd, Marion B. Watson, Harrison Dodd and C. L. Griswold.

Q. What witnesses actually appeared at the time of her making final proof and testifying in her behalf?

A. Marion B. Watson and Harrison Dodd.

Q. Were the questions propounded in this case the same as those propounded in the other cases which you have testified concerning?

A. Yes, sir; the same questions.

Q. Was the purport and effect of the testimony the same as in the other cases you have testified to?

A. It appears to be.

Q. Well, it actually is, is it not?

A. It actually is; yes, to the same purport and effect.

Q. Now, I will ask you to state whether or not you can give us the date of the final receipt in that case?

A. On the 19th day of October, 1899.

Q. And when was this entry approved by the general land office? A. August 7th, 1900.

Q. And patent issued on what date?

A. September 7th, 1900.

Q. What is the next entry you have before you?

A. Cash Entry No. 6225 by Harrison Dodd.

Q. What is the date of his sworn statement?

A. His sworn statement was made July 29th, 1899.

(Testimony of George D. Greene.)

Q. For what land was his entry made?

A. For the east half of the northeast quarter, and the north half of the southeast quarter of section 18, township 14 north, range 13 west.

Q. What witnesses did he name as his witnesses at the time of the making of his final proof?

A. Hiram Dodd, Mathilde Dodd, Lizzie Dodd, Marion B. Watson.

Q. What witnesses actually appeared at the time of making final proof and testified in his behalf?

A. Marion B. Watson and Hiram Dodd.

Q. Were the questions propounded in this case the same as those propounded to the claimant and the witnesses in the other cases concerning which you have testified?

A. The same questions were propounded to the claimant and the witnesses as in the other cases in which I have testified.

Q. Now, I will ask you to state whether or no the answers given to the questions propounded were in effect the purport—were of the same purport and effect as the answers given in the cases you have already testified in?

A. They were to the same purport and effect; yes, sir.

Q. I will ask you to state what the date of the final receipt is in that case? A. October 19th, 1899.

Q. And when was the entry approved by the general land office? A. August 7th, 1900.

Q. And the date of the issuance of patent was what?

A. September 7th, 1900.

(Testimony of George D. Greene.)

Q. Well, sir; what is the next entry that you have there?

A. 6224; Cash Entry No. 6224 by Hiram Dodd.

Q. What is the date of that sworn statement?

A. The date of the sworn statement is July 29th, 1899.

Q. And the description of the land is given there as what?

A. The south half of the southeast quarter and the northwest quarter of the southeast quarter and northeast quarter of the southwest quarter of section 6, township 14 north, range 13 west.

Q. And who were the witnesses named by this entryman?

A. Harrison Dodd, Marion B. Watson, Lizzie Dodd, and C. L. Griswold.

Q. What witnesses actually appeared at the time of making the final proof in behalf of the claimant?

A. Marion B. Watson and Harrison Dodd.

Q. I will ask you to state whether or not the questions propounded in the final proof in this entry was the same as those questions propounded in the other cases?

A. They are the same questions.

Q. I will ask you to state whether the purport of the testimony was the same as in the other entries, in which you have testified?

A. It was to the same practical effect.

Q. What is the date of the final receipt?

(Testimony of George D. Greene.)

A. October 19th, 1899.

Q. When was this entry approved by the general land office? A. August 7th, 1900.

Q. And upon what date was patent issued thereon?

A. September 7th, 1900.

Q. Now, what is the next entry, Mr. Greene?

A. The next entry is Cash Entry 6217, by Thomas H. McConnell.

Q. What is the date of it?

A. The date of the sworn statement was July 11, 1899.

Q. And what was the description of the land embraced in that entry?

A. The north half of the northwest quarter and the southeast quarter of the northwest quarter, and the southwest quarter of the northeast quarter of section 24, township 14 north, range 14 west.

Q. What witnesses had he named to appear for him at the time of the making of the final proof in this case?

A. Thomas H. McConnell, Charles S. Griswold, Chauncey L. Griswold, Charles Sperry, and Marion B. Watson.

Q. Isn't this a consolidated notice?

A. I don't know, I will look and see. Yes, that is a consolidated notice.

Q. What witnesses actually appeared and testified on behalf of the claimant at the time of the making of the final proof in this entry?

A. Griswold and Charles Sperry. Charles L. Griswold, is it? Yes, sir.

(Testimony of George D. Greene.)

By Mr. MAYNARD.—Who is Charles L. Griswold?

By the WITNESS.—That is what I don't know. It is evidently an error.

By Mr. MAYNARD.—Didn't they name two witnesses in there?

A. No, Charles; the clerk must have made a mistake.

Q. I thought you said that one was Chauncey L. Griswold, and the other Charles S. Griswold, in the same advertisement?

A. No, I see that if I did I made a mistake. Yes, when the clerk put them in he made a mistake in taking down the names of the witnesses.

Q. Now, state whether or not the questions propounded to the witness in this entry were the same as those presented in the other cases concerning which you have testified?

A. Yes, sir, they were the same.

Q. And were the answers given by the witnesses on this final proof practically the same as in the cases about which you have already testified?

A. Yes, sir, they were practically the same.

Q. What is the date of the final proof in this case?

A. The date of the final proof in this case is October 12, 1899.

Q. And when was the entry approved by the general land office, Mr. Greene?

A. August 7th, 1900.

Q. And the date patent was issued was what?

A. September the 7th, 1900.

(Testimony of George D. Greene.)

By Mr. BICKFORD.—It appearing from the testimony of the witness on cross-examination that in the matter of the timber and stone entry of John Gilles that the entry has not passed to a patent, but on the contrary still remains in the general land office by agreement of counsel for the respective parties, the stenographer is allowed to copy into the record all the papers connected with the timber and stone entry of Charles Cloutier, being numbered 6,120, and embracing in the entry by him the southwest quarter of the northeast quarter, and the north half of the southeast quarter, and the southeast quarter of the southeast quarter of section 12, township 14 north, of range 13 west, with the endorsements found upon the outside of the papers, and including the testimony of the claimants, the testimony of the witnesses, the final receipt and all the other papers connected with the case.

By Mr. MAYNARD.—For what purpose is this introduced?

By Mr. BICKFORD.—For the purpose of the cross-examination of the witness relative to the entries made in the Helena land office, and for the purpose of finding the cul-de-sac, which we have run up, by reason of the copying of the papers in the entry of John Gilles instead of one that has already passed to patent. We want to avoid confining our cross-examination of the witness upon entry which has not passed to patent. In other words, the case of John Gilles entry, does not correspond

(Testimony of George D. Greene.)

with the other entries, concerning which I want to cross-examine the witness upon.

It is stipulated by and between counsel for the respective parties that the said John Gilles died on the twenty-fourth day of August, 1900, and that the only fault in his papers was the fact that a ten cent revenue stamp was omitted from his certificate of naturalization and by reason of that neglect on his part to so furnish the stamp, and he having since died, in the meantime, the defect which was pointed out by the officers of the land office, was not remedied.

HENRY N. BLAKE,
Examiner in Chancery.

(4-537.)

This affidavit can be made only upon the personal knowledge of applicant derived from his own personal examination of the land.

TIMBER AND STONE LANDS SWORN STATEMENT.
(To be made in duplicate.)

T. A. 66.

Land Office at Helena, Mont.
(Date) May 19th, 1899.

I, Charles Cloutier, of (town or city) Clearwater, county of Deer Lodge, State of Montana, desiring to avail myself of the provisions of the act of Congress of June 3, 1878, entitled, "An act for the sale of timber lands, in the States of California, Oregon, Nevada, and in Washington Territory," as extended to all the public land States by act of August 4, 1892, for the purchase of the

(Testimony of George D. Greene.)

S. W. 4, of N. E. 4, N. 3 of S. E. 4, and S. E. 4 of S. E. 4, of section 12, township 14 N., of range 13 W., in the district of lands subject to tale at Helena, Montana, do solemnly swear that I am a native citizen of the United States of the age of 39 years, am by occupation a laborer that I have personally examined said land, and from my personal knowledge state that said land is unfit for cultivation and valuable chiefly for its stone and timber; that it is uninhabited; that it contains no mining or other improvements, nor, as I verily believe, any valuable deposit of gold, silver, cinnabar, copper or coal; that I have made no other application under said acts; that I do not apply to purchase the land above described on speculation, but in good faith to appropriate it to my own exclusive use and benefit, and that I have not directly or indirectly, made any agreement or contract in any way or manner with any person or persons whomsoever by which the title I may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except myself, and that my postoffice address is Clearwater, County of Deer Lodge, Montana,

CHARLES CLOUTER,

I hereby certify that the foregoing affidavit was read to affiant in my presence before he signed his name thereto, that said affiant is to me personally known (or has been satisfactorily identified before me by ————), and that I verily believe him to be the person he represents himself to be; and that this affidavit was sub-

(Testimony of George D. Greene.)

scribed and sworn to before me this 19th day of May, 1899.

GEORGE D. GREENE,
Register.

Note.—Every person swearing falsely to the foregoing affidavit is guilty of perjury, and will be punished as provided by law for such offense. In addition thereto, the money that may be paid for the land is forfeited, and all conveyances of the land, or of any right, title, or claim thereto are absolutely null and void as against the United States.

X. In case the party has been naturalized, or has declared his intention to become a citizen, a certified copy of his certificate of naturalization or declaration of intention as the case may be, must be furnished.

If the residence is in a city, the street and number must be given.

6-255.

Endorsed on the back as follows: (4-537.)

TIMBER LANDS—Acts of June 3, 1878, and August 4, 1892.

Sworn Statement.

Land office, at Helena, Montana, Sec. 12, township 14 N, range 13 W.

CHARLES CLOUTIER, 4-255.

Filed U. S. Land Office, Helena, Mont., May 19, 1899.

GEORGE D. GREENE,
Reg.

(Testimony of George D. Greene.)

TIMBER LAND ACT, JUNE 3, 1878.

NOTICE FOR PUBLICATION.

United States Land Office, Helena, Mont.

May 19, 1899.

Notice is hereby given that in compliance with the provisions of the act of Congress of June 3, 1878, entitled "An act for the sale of timber lands in the States of California, Oregon, Nevada, and Washington Territory," as extended to all the public land States by act of August 4, 1892, Charles Cloutier, of Clearwater, County of Deer Lodge, State of Mont., has this day filed in this office his sworn statement, No. 66, for the purchase of the S. W. 4, N. E. 4, N. 2, S. E. 4, and S. E. 4, S. E. 4, of section No. 12, in township No. 14 N., range No. 13 west, and will offer proof to show that the land sought is more valuable for its timber or stone than for agricultural purposes, and to establish his claim to said land before the register and receiver of this office at Helena, Mont., on the 1st day of Aug., 1899.

He names as witnesses: John Gilles, C. L. Griswold, Stephen Tupper, A. J. Griswold, of Clearwater, Mont.

Any and all persons claiming adversely the above-described lands are requested to file their claims in this office on or before said 1st day of Aug., 1899.

GEORGE D. GREENE,

Register.

This notice must be published once a week for ten consecutive weeks in a newspaper published nearest the

(Testimony of George D. Greene.)

land, and must also be posted in a conspicuous place in the land office for the same period.

CERTIFICATE AS TO POSTING OF NOTICE.

United States Land Office.

————, 189—.

I, Garnet M. News, register of the land office, certify that the above notice was by me posted in a conspicuous place in my office during the period of sixty (60) days and over, I having first posted the same on the —— day of ————, 189—.

I further certify that there are no adverse claims to the land above-described known to this office.

————————,

Register.

PROOF OF PUBLICATION.

State of Montana, }
County of Granite. } ss.

John H. Cole, being first duly sworn, deposes and says that he is the publisher of the "Garnet Mining News," a newspaper published at Garnet, in the county of Granite, in the State of Montana; that the notice of Charles Cloutier for timber land entry number 66, of which a copy is hereto attached, was first published in said newspaper, in its issue dated the 25th day of May, 1899, and was published in each weekly issue of said paper for 10 consecutive weeks, the full period of 60 days. The last publication thereof, being in the issue dated the 27th day of July, 1899.

(Testimony of George D. Greene.)

COPY OF PUBLICATION.

Notice for Publication.

Timber Land Act, June 3, 1878.

United States Land Office, Helena, Montana.

May 19, 1899.

Notice is hereby given that in compliance with the provisions of the act of Congress of June 3, 1878, entitled, "An act for the sale of timber land in the States of California, Oregon, Nevada and Washington Territory," as extended to all the public land States by act of August 4, 1892, Charles Cloutier of Clearwater, county of Deer Lodge, State of Montana, has this day filed in this office.

JOHN H. COLE.

Subscribed and sworn to before me this 27th day of July, A. D. 1899.

[Seal] THOMAS F. WARD,

Notary Public in and for Granite County, Mont.

NOTICE FOR PUBLICATION.

Timber Land Act, June 3, 1878.

United States Land Office, Helena, Montana,

May 19, 1899.

Notice is hereby given that in compliance with the provisions of the act of Congress of June 3, 1878, entitled, "An act for the sale of timber lands in the States of California, Oregon, Nevada and Washington Territory," as extended to all the public land States by act of August 4, 1892, Charles Cloutier, of Clearwater, County of Deer Lodge, State of Montana, has this day filed in this office

(Testimony of George D. Greene.)

a sworn statement No. 66, for the purchase of the S. W. ¼, N. E. ¼, N. ½, S. E. ¼ & S. E. ¼, S. E. ¼ of section 12, in township No. 14 north, range No. 13 west, and will offer proof to show that the land sought is more valuable for its timber or stone than for agricultural purposes, and to establish his claim to said land before the register and receiver of this office at Helena, Montana, on the 1st day of August, 1899.

He names as witnesses John Gillis, C. L. Griswold, Stephen Tepper and A. J. Griswold of Clearwater, Montana.

Any and all persons claiming adversely the above-described lands are requested to file their claims in this office on or before said 1st day of August, 1899.

GEORGE D. GREENE,
Register.

First Pub. May 25, —34.

(4-227)

CERTIFICATE AS TO POSTING OF NOTICE.

Land Office at Helena, Montana, Aug. 1st, 1899.

I, George D. Greene, Register, do hereby certify that a notice, a printed copy of which is hereto attached, was by me posted in a conspicuous place in my office for a period of 60 days, I having first posted said notice on the 19th day of May, 1899, and the same remained so posted during the entire period of publication.

GEORGE D. GREENE,
Register.

(Testimony of George D. Greene.)

(4-062.)

NONMINERAL AFFIDAVIT.

This affidavit can be sworn to only on personal knowledge, and cannot be made on information and belief.

The nonmineral affidavit accompanying an entry of public land must be made by the party making the entry, and only before the officer taking the other affidavits required of the entryman.

UNITED STATES LAND OFFICE.

Helena, Mont., Aug. 1st, 1899.

Charles Cloutier, being duly sworn according to law, deposes and says that he is the identical person who is an applicant for Government title to the S. W. 4, N. E. 4, N. 2, S. E. 4, and S. E. 4, S. E. 4, sec. 12, T. D. 14 N., Range 13 W., M. M. That he is well acquainted with the character of said described land, and with each and every legal subdivision thereof, having frequently passed over the same; that his personal knowledge of said land is such as to enable him to testify understandingly with regard thereto; that there is not to his knowledge, within the limits thereof, any vein or lode of quartz or other rock in place, bearing gold, silver, cinnabar, lead, tin, or copper, or any deposit of coal; that there is not within the limits of said land; to his knowledge, any placer, cement, gravel, or other valuable mineral deposit; that no portion of said land is claimed for mining purposes under the local customs or rules of mines or otherwise; that no portion of said land is worked for minerals during any part

(Testimony of George D. Greene.)

of the year by any person or persons; that said land is essentially nonmineral land, and that his application therefore is not made for the purpose of fraudulently obtaining title to mineral land, but with the object of securing said land for agricultural purposes, and that his postoffice address is Clearwater, Montana.

CHARLES CLOUTIER.

I hereby certify that the foregoing affidavit was read to affiant in my presence before he signed his name thereto; that said affiant is to me personally known, and that I verily believe him to be a credible person and the person he represents himself to be, and that this affidavit was subscribed and sworn to before me in my office in Helena, Montana, with the Helena, Montana, Land District, on this 1st day of August, 1899.

GEORGE D. GREENE,

Register.

Note.—The office before whom the deposition is taken should call the attention of the witness to the following section of the Revised Statutes, and state to him that it is the purpose of the Government, if it be ascertained that he testifies falsely, to prosecute him to the full extent of the law; Revised Statutes of the United States.

Title LXX—Crimes—Chap. 4.

Sec. 5392. Every person who, having taken an oath before a competent tribunal officer, or other person, in any case in which a law of the United States, authorizes an oath to be administered, that he will testify, declare, de-

(Testimony of George D. Greene.)

pose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed as true, willfully and contrary to such oath, or subscribes any material matter which he does not believe to be true, is guilty of perjury, and shall be punished by a fine of not more than Two Thousand Dollars, and by imprisonment at hard labor, not more than five years, and shall, moreover thereafter be incapable of giving testimony in any court of the United States until such time as the judgment against him is reversed. (See sec. 1750.) 6-322.

(4-370)

14-155.

(The testimony of claimant and witnesses must be taken at the same time, and before the register or receiver of the land district in which the land is situated.)

TIMBER AND STONE LANDS.

Testimony of Claimant.

Charles Cloutier, being called as a witness, in support of his application to purchase the S. W. 4, N. E. 4, N. 2, S. E. 4, and S. E. 4, S. W. 4 of Sec. 12, Township 14 N. of Range 13 W., testifies as follows:

Question 1. What is your age, postoffice address, and where do you reside?

Answer. Age, 39 years; P. O. address and residence, Clearwater, Montana.

Ques. 2. Are you a native-born citizen of the United States, and if so in what State or Territory were you born?

(Testimony of George D. Greene.)

Ans. I am native born—born in Bangor, Maine.

Ques. 3. Are you the identical person who applied to purchase this land on the 19th day of May, 1899, and made the sworn statement assigned by law before the register on that day?

Ans. I am.

Ques. 4. Are you acquainted with the land above described, by personal inspection of each of its smallest legal subdivisions? Ans. I am.

Ques. 5. When and in what manner was such an inspection made?

Ans. About May 15th, 1899, by walking over the land and carefully examining it. I was familiar with the land some time before.

Ques. 6. Is the land occupied; or are there any improvements on it not made for ditch or canal purposes, or which were not made or do not belong to you?

Ans. It is unoccupied. There are no improvements on it.

Ques. 7. Is the land fit for cultivation, or would it be fit for cultivation if the timber were removed?

Ans. No, sir.

Ques. 8. What is the situation of this land and what is the nature of the soil and what causes render the land unfit for cultivation?

Ans. It lays on the north slope of the mountains, is rough, rugged and rocky. Soil is thin and poor and cannot be irrigated.

Ques. 9. Are there any salines or indications of de-

(Testimony of George D. Greene.)

posits of gold, silver, cinnabar, copper or coal on this land? If so, state what they are, and whether the springs or mineral deposits are valuable?

Ans. There are none.

Ques. 10. Is the land more valuable for mineral or any other purposes than for the timber or stone thereon, or is it chiefly valuable for timber or stone?

Ans. Chiefly valuable for timber.

Ques. 11. From what fact do you conclude that the land is chiefly valuable for timber or stone?

Ans. Because of the timber on it and because it has no other apparent value.

Ques. 12. What is the estimated market value of the timber standing upon this land?

Ans. From $600 to $800.

(In case the party is of foreign birth a certified transcript from the court records of his declaration of intention to become a citizen or naturalization or a copy thereof, certified by the officer taking this proof, must be filed with the case.)

Ques. 13. Have you sold or transferred your claim to this land since making your sworn statement or have you directly or indirectly made any agreement or contract, in any way or manner, with any person whomsoever, by which the title which you may acquire from the Government of the United States may inure in whole or in part, to the benefit of any person except yourself?

Ans. I have not.

Ques. 14. Do you make this entry in good faith for the

(Testimony of George D. Greene.)

appropriation of the land exclusively to your own use and not for the use or benefit of any other person?

Ans. Yes, sir.

Ques. 15. Has any other person than yourself, or has any firm, corporation, or association any interest in the entry you are now making, or in the land or in the timber thereon? Ans. No, sir.

CHARLES CLOUTIER.

I hereby certify that the above-named Charles Cloutier, personally appeared before me; that I verily believe affiant to be the person he represents himself to be; and that each question and answer in the foregoing testimony was read to him in my presence before he signed his name thereto, and that the same was subscribed and sworn to before me at Helena, Mont., this 1st day of August, 1899.

GEORGE D. GREENE,

Register.

Note.—Every person swearing falsely to the above deposition is guilty of perjury and will be punished as provided by law for such offense. In addition thereto the money that may be paid for the land is forfeited, and all conveyances of the land or of any right, title or claim thereto are absolutely null and void as against the United States.

I hereby certify that I have tested the accuracy of affiant's information and the bona fides of this entry by a close and sufficient oral cross-examination of the claimant and his witnesses, directed to ascertain whether the entry is made in good faith for the appropriation of the

(Testimony of George D. Greene.)

land to the entryman's own use, and not for sale or speculation, and whether he has conveyed the land or his right thereto, or agreed to make any such conveyance or whether he has directly or indirectly entered into any contract or agreement in any manner with any person or persons whomsoever, by which the title that may be acquired by the entry shall inure in whole or in part to the benefit of any person or persons except himself, and am satisfied from such examination that the entry is made in good faith for entryman's own exclusive use and not for sale or speculation, nor in the interest nor for the benefit of any other person or persons, firm or corporation.

GEORGE D. GREENE,
Register.

[Endorsed]: (4-370) Timber Lands. Act of June 3, 1878, and August 4, 1892. Testimony of Claimant. Chas. Cloutier. Land Office at Helena, Mont. Section 12, Township 14 N., Range 13 W.

(4-371.)

(The testimony of two witnesses in this form, taken separately, required in each case.)

Testimony of Witness under Act of June 3, 1878.

C. L. Griswold, being called as a witness in support of the application of Charles Cloutier to purchase the S. W. 4, N. E. 4, N. 2, S. E. 4 and S. E. 4, S. E. 4, of section 12, township 14 N. of range 13 W., testified as follows:

Ques. 1. What is your postoffice address and where do you reside?

(Testimony of George D. Greene.)

Ans. Age 46 years, P. O. address and residence, Clearwater, Montana.

Ques. 2. What is your occupation?

Ans. Lumberman.

Ques. 3. Are you acquainted with the land above described by personal inspection of each of its smallest legal subdivision? Ans. I am.

Ques. 4. When and in what manner was such inspection made?

Ans. About the 15th day of May by walking all over the land and examining it carefully. Had been familiar with the land for over three years.

Ques. 5. Is it occupied or are there any improvements on it not made for ditch or canal purposes, or which were not made by, or do not belong to the said applicant?

Ans. It is unoccupied. There are no improvements on it.

Ques. 6. Is it fit for cultivation?

Ans. It is not.

Ques. 7. What causes render it unfit for cultivation?

Ans. It is high, rolling, covered with timber, rocky, and not susceptible of irrigation.

Ques. 8. Are there any salines, or indications of deposits of gold, silver, cinnabar, copper or coal on this land? If so, state what they are, and whether the springs or mineral deposits are valuable?

Ans. There are none.

Ques. 9. Is the land more valuable for mineral or any

(Testimony of George D. Greene.)

other purposes than for the timber or stone thereon, or is it chiefly valuable for timber or stone?

Ans. Chiefly valuable for timber.

Ques. 10. From what facts do you conclude that the land is chiefly valuable for timber or stone?

Ans. From the fact that it is covered with timber, and that it has no apparent value for anything else.

Ques. 11. Do you know whether the applicant has directly or indirectly made any agreement or contract, in any way or manner, with any person whomsoever, by which the title which he may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except himself?

Ans. He has not to my knowledge. I feel certain he has not.

Ques. 12. Are you in any way interested in this application, or in the lands above-described, or the timber or stone, salines, mines, or improvements of any description whatever thereon?

Ans. I am not.

C. L. GRISWOLD.

I hereby certify that witness is a person of respectability; that each question and answer in the foregoing testimony was read to him before he signed his name thereto, and that the same was subscribed and sworn to before me this 1st day of Aug. 1899.

GEORGE D. GREENE,

Register.

(Testimony of George D. Greene.)

Note.—The officer before whom the testimony is taken should call the attention of the witness to the following section of the Revised Statutes, and state to him that it is the purpose of the Government, if it be ascertained that he testified falsely, to prosecute him to the full extent of the law.

Title LXX—Crimes—Ch. 4.

Sec. 5392. Every person who, having taken an oath before a competent tribunal, officer, or person in any case in which a law of the United States authorized an oath to be administered, that he will testify, declare, depose or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed is true, willfully and contrary to such oath, states and subscribes any material matter which he does not believe to be true, is guilty of perjury and shall be punished by a fine of not more than two thousand dollars, and by imprisonment, at hard labor, not more than five years, and shall, moreover, thereafter be incapable of giving testimony in any court of the United States until such time as the judgment against him is reversed. (See Sec. 1750.)

[Endorsed]: Timber Lands. Act of June 3, 1878. Testimony of Witness. Land Office at Helena, Mont. Section 12, Township 14 N., Range 13 W.

(4-372.)

(The testimony of two witnesses, in this form, taken separately, required in each case.)

(Testimony of George D. Greene.)

Testimony of Witness Under Act of June 3, 1878.

John Gilles, being called as a witness, in support of the application of Charles Cloutier to purchase the S. W. 4, N. E. 4, N. 2, S. E. 4, S. E. 4, S. E. 4, of section 12, township 14 N., of range 13 W., testifies as follows:

Ques. 1. What is your postoffice address and where do you reside?

Ans. Age, 36 years; P. O. address and residence Clearwater, Montana.

Ques. 2. What is your occupation?

Ans. Cook.

Ques. 3. Are you acquainted with the land above-described by personal inspection of each of its smallest legal subdivisions? Ans. I am.

Ques. 4. When and in what manner was such inspection made?

Ans. About the 15th day of May, by walking all over the land and examining it carefully. Have been familiar with the land for over three years.

Ques. 5. Is it occupied; or are there any improvements on it, not made for ditch or canal purposes, or which were not made by, or do not belong to the said applicant?

Ans. It is unoccupied. There are no improvements on it.

Ques. 6. Is it fit for cultivation?

Ans. It is not.

Ques. 7. What causes render it unfit for cultivation?

(Testimony of George D. Greene.)

Ans. It is high, rolling, covered with timber, rocky and not susceptible of irrigation.

Ques. 8. Are there any salines, or indications of deposit of gold, silver, cinnabar, copper, or coal on this land? If so, state what they are, and whether the springs or mineral deposits are valuable?

Ans. There are none.

Ques. 9. Is the land more valuable for mineral or any other purposes than for the timber or stone thereon, or is it chiefly valuable for timber or stone?

Ans. Chiefly valuable for timber.

Ques. 10. From what facts do you conclude that the land is chiefly valuable for timber or stone?

Ans. From the fact that it is covered with timber and that it has no apparent value for anything else.

Ques. 11. Do you know whether the applicant has directly or indirectly made any agreement or contract, in any way or manner, with any person whomsoever, by which the title which he may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except himself?

Ans. He has not to my knowledge. I feel certain he has not.

Ques. 12. Are you in any way interested in this application, or in the lands above-described, or the timber or stone, salines, mines, or improvements, of any description whatever thereon? Ans. I am not.

JOHN GILLES.

(Testimony of George D. Greene.)

I hereby certify that witness is a person of respectability; that each question and answer in the foregoing testimony was read to him before he signed his name thereto, and that the same was subscribed and sworn to before me this 1st day of Aug., 1899.

GEORGE D. GREENE,

Register.

Note.—The officer before whom the testimony is taken should call the attention of the witness to the following section of the Revised Statutes, and state to him that it is the purpose of the Government, if it be ascertained that he testifies falsely, to prosecute him to the full extent of the law.

Title LXX.—Crimes—Ch. 4.

Sec. 5392. Every person who, having taken an oath before a competent tribunal, officer or person in any case, in which a law of the United States authorizes an oath to be administered that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed, is true, willfully and contrary to such oath, states and subscribes any material matter, which he does not believe to be true, is guilty of perjury, and shall be punished by a fine of not more than two thousand dollars, and by imprisonment at hard labor, not more than five years, and shall, moreover, thereafter be incapable of giving testimony in any court of the United States until such time as the judgment against him is reversed. (See Sec. 1750.)

(Testimony of George D. Greene.)

[Endorsed]: Timber Lands. Act of June 3, 1878. Testimony of Witness. Land Office at Helena, Mont. Section 12, Township 14 N., Range 13 W.

Payment made by surrender of certificates of location Nos. 857B, for 40 acres; 858B, for 37.40 acres; 846D, for 80 acres; 846E, for 80 acres; 735C, for 80 acres, and $3.25 in cash. (Act of June 3, 1878.) Act of Dec. 13, 1894.

No. 6120. Receiver's Office at Helena Montana.

Aug. 1, 1899.

Received from Charles Cloutier, of Deer Lodge County, Montana, the sum of four hundred dollars and no cents; being in full for the southwest quarter, northeast quarter, north half, southeast quarter, and southeast quarter, southeast quarter of section No. 12, in township No. 14 north, of range No. 13 west, Mont. Mer., containing 160 acres and no hundredths, at $2.50 per acre.

$400.00

JOHN HORSKY,

Receiver.

$1.00 testimony fee received. Number of written words, 445. Rate per 100 words, 22 1/2 cents. $10,00, sworn statement.

14-153.

Payment made by surrender of certificates of location Nos. 857B, for 40 acres, 858B, for 37.40 acres; 846D, for 80 acres; 846E, for 80 acres and 735C, for 80 acres; (Act of June 3, 1878.) Act of Dec. 13, 1894, and $3.25 in cash.

(Testimony of George D. Greene.)

No. 6120. Land Office at Helena, Montana.

Aug. 1st, 1899.

It is hereby certified that, in pursuance of law, Charles Cloutier, residing at Clearwater, Deer Lodge County, State of Montana, on this day purchased of the register of this office the southwest quarter, northeast quarter, north half, southeast quarter, and southeast quarter, southeast quarter of section No. 12, in township No. 14 north, of range No. 13 west, of the Mont. principal meridian, Montana, containing 160 acres, at the rate of two dollars and 50 cents, for which the said Charles Cloutier has made payment in full as required by law.

Now, therefore, be it known, that, on presentation of this certificate, to the Commissioner of the General Land Office, the said Charles Cloutier, shall be entitled to receive a patent for the lot above-described.

GEORGE D. GREENE,

Register.

Patent to contain reservation according to proviso to the act of Aug. 30.

[Endorsed]: Patent to contain reservation according to proviso to the act of Aug. 30, 189—. (4-189) No. 6120. Cash Entry. Land Office at Helena, Montana. Sec. 12, Town. 14 N., Range 13 W. Nov. 16, '99, approved as to assignment of scrip., S. W. W. G. Charles Cloutier. Div. C. 51. Approved Dec. 20, 1899. Ex. by E. W. W. Clerk, Division "C." Patented Feb. 2, 1900. Recorded Vol. 32, page 225. 19/40. Patent Transmitted Feb. 17, 1900, to Register and Receiver.

Monday, March 17th, 1902, 2 P. M.

Hearing resumed. Thereupon the witness GEORGE D. GREENE recalled for further examination.

Cross-examination.

Q. (Mr. BICKFORD.) What was the next one, Mr. Greene?

A. The next one I think is Cash Entry 6203, by Marion B. Watson.

Q. When was the sworn statement filed?

A. July 17th, 1899.

Q. And for what land?

A. For the southeast quarter of section 2, township 15 north, of range 14 west.

Q. And who were the witnesses advertised to appear in support of the claim of this man?

A. C. L. Griswold, Stephen Tepper, John Gilles, T. B. Bryan.

Q. And who were the witnesses who actually appeared?

A T. B. Bryan and C. L. Griswold were the witnesses who appeared.

Q. The questions asked the witnesses on that final hearing were the same in form as these other cases that you have testified to? A. Yes, sir.

Q. And were the answers the same?

A. Well, to the same practical effect, of course, there is some variation in all of these cases.

Q. But the variations that you speak of, were they matters of substance or mere matters of form?

(Testimony of George D. Greene.)

A. Matters of form rather than substance.

Q. Now, with reference to this entry, when was the final receipt issued?

A. September 28th, 1899.

Q. And that was the date of the final proof?

A. Yes, sir.

Q. (Mr. MAYNARD.) Is that a scrip case, too?

A. Yes, sir; part payment was made by a certificate of Military Bounty Land Warrant for 160 acres and two hundred dollars in cash.

Q. (Mr. BICKFORD.) Now, when was this entry approved by the Department of the Interior at Washington? A. August 9th, 1900.

Q. When was the patent issued for it?

A. September 7th, 1900.

Q. Now, what is the next entry that you have, Mr. Greene?

A. No. 6202, by Harriet Watson.

Q. (Mr. MAYNARD.) That is the next one after Marion? A. Yes, sir.

Q. (Mr. BICKFORD.) What is the date of that sworn statement?

A. July 17th, 1899, for the north half of the southeast quarter and the northeast quarter of the southwest quarter, and the southeast quarter of the northwest quarter of section 12, township 14 north, of range 14 west.

Q. And who were the witnesses named by this entry?

(Testimony of George D. Greene.)

A. Katie Watson, C. L. Griswold, T. H. McConnell, and M. B. Watson.

Q. What witnesses appeared in support of the claim of this claimant?

A. M. B. Watson and C. L. Griswold.

Q. And were the questions propounded to the witnesses in this case the same as those propounded in all of the others? A. Yes, sir.

Q. And was the testimony in this case practically and to all intents the same as given in all the other cases you have testified to?

A. It was practically the same.

Q. I will ask you to state when it was that the final receipt was issued?

A. September 28th, 1899.

Q. When was it that the entry was approved by the Department of the Interior or the general land office?

A. January 18th, 1900.

Q. And when was the patent issued?

A. April 12th, 1900.

Q. What is the next one you have?

A. Cash Entry No. 6204, by Charles H. Moss.

Q. What is the date of the sworn statement?

A. The sworn statement is dated July 12th, 1899, for the west half of the northeast quarter, the southeast quarter of the northeast quarter, the northeast quarter of the southeast quarter, section 8, township 15 north, of range 14 west.

Q. And who were the witnesses in this entry?

(Testimony of George D. Greene.)

A. The witnesses were C. L. Griswold, David Morris, Harry C. Dorman and R. M. Cobban.

Q. What witnesses appeared at the time of the making of the final proof?

A. Harry C. Dorman and C. L. Griswold.

Q. Were the answers propounded to the witnesses the same in this case as in all of the others?

A. Yes, sir, the questions were all the same, and the answers that were material were the same as given in the other cases.

Q. In all of the material points required to be proven?

A. I said that the evidence was practically the same; I meant that the evidence supports the material issues that are necessary to be proven in order to support a final certificate.

Q. In other words, they showed a compliance with the law with reference to making final proof?

A. Yes, sir, that is it.

Q. And the answers to the questions propounded were satisfactory to the register and receiver, and was passed for that reason? A. Yes, sir.

Q. I will ask you to state whether or not the final receipt was issued on the same day as the final proof?

A. Yes, sir, September 29th, 1899.

Q. Now, when was it that this entry was passed upon by the general land office and approved?

A. It was approved December 27th, 1899, and patented February 2d, 1900.

(Testimony of George D. Greene.)

Q. What is the next entry you have?

A. Cash Entry No. 6205, by Harry C. Dorman.

Q. What is the date of the sworn statement in this case?

A. July 12th, 1899, for the south half of the northeast quarter, the northwest quarter of the northeast quarter and the northeast quarter of the northwest quarter, section 4, township 15 north, of range 14 west.

Q. And who were the witnesses?

A. C. L. Griswold, David Morris, Charles Moss and R. M. Cobban.

Q. What witnesses appeared to testify in his behalf at the time of final proof?

A. Charles Moss and C. L. Griswold.

Q. Were the questions propounded to this witness the same as in the other cases?

A. The same, yes, sir.

Q. Were the answers to the same effect as in the other cases?

A. Yes, sir, the same practical effect.

Q. I will ask you to state whether or no that entry was ever approved by the general land office, and if so, when?

A. The final certificate was issued September 29th, 1899, it was approved by the general land office, December 26th, 1899, and patent issued February 2d, 1900.

Q. Go on with the rest of them?

A. The next is Cash Entry No. 6208 for Katie Watson; the sworn statement was made July 7th, 1899, for

(Testimony of George D. Greene.)

the northeast quarter of section 12, township 14 north of range 14 west; the witnesses were D. E. Watson, C. L. Griswold, John Gilles, and J. H. McConnell. The witnesses who appeared and testified were D. E. Watson and C. L. Griswold. Final certificate issued October 7th, 1899, approved by the Commissioner of the general land office August 7th, 1900, and patent issued September 7th, 1900.

Q. The answer to the questions propounded to the witnesses who appeared upon the final proof of the claimant, were they the same as in the other cases?

A. Yes, sir, the same practical effect.

Q. Were the answers the same as in the other cases?

A. I mean to say the questions were the same, the answers were to the same practical effect.

Q. You may go on to the next one?

A. The next one in cash entry is No. 6211, by Edward Dodd; he made sworn statement July 25th, 1899, for the northwest quarter of section 8, township 14 north, of range 13 west.

Q. And who were his witnesses?

A. Harrison Dodd, Allen Dodd, M. B. Watson and D. E. Watson; the witnesses who testified on final proof were D. E. Watson and M. B. Watson.

Q. Were the questions propounded to the witnesses in that case the same as in the others?

A. Yes, sir.

Q. And the answers were all to the same effect?

(Testimony of George D. Greene.)

A. To the same practical effect.

Q. I will ask you to state when it was that this entry was approved in the general land office at Washington?

A. Well, we issued the certificate October 10th, 1899, it was approved in Washington August 7th, 1900, and patent issued September 7th, 1900.

Q. Right here I will ask you whether or no it is the custom in the general land office to make an examination of all of these papers before the approval of them, if you know?

A. Before the approval in the general land office?

Q. Yes.

A. Oh, yes, they are examined, and when a defect or deficiency in the proof is found, they call upon the parties to supply it, and if the papers are correct they are approved.

Q. If there is any defect or deficiency they are called upon to supply it?

A. Then, as I stated, they call upon the claimant to supply any defect in the proof, and after that is settled and it is found to be sufficient, it is approved; if that is not sufficient the entryman is then given an opportunity of correcting his proof if there is any deficiency in it.

Q. What is the next entry you have?

A. The next entry is Cash Entry No. 6212, by Cora Dodd; the sworn statement in this case was made July 25th, 1899; the witnesses were Harrison Dodd, Allen Dodd, M. B. Watson and D. E. Watson. The witnesses

(Testimony of George D. Greene.)

who made final proof were M. B. Watson and Dock E. Watson.

Q. Were the questions propounded in this case the same as in the other cases you have testified to?

A. Yes, sir.

Q. And were the answers to the same general effect as the answers in the other case? A. Yes, sir.

Q. What is the date of the final receipt in that case?

A. The final receipt was issued October 10th, 1899; it was approved for patent August 7th, 1900, and patent issued September 7th, 1900.

Q. You may go on with the next, if you please.

A. The next is Cash Entry No. 6213 by Dock E. Watson; sworn statement was filed July 25th, 1899; the witnesses advertised, Edward Dodd, Cora Dodd, C. L. Griswold and M. B. Watson. The witnesses who appeared at the final proof were C. L. Griswold and M. B. Watson.

Q. Were the questions propounded to this witness the same as the questions in the other cases?

A. Yes, sir.

Q. And the answers were to the same effect?

A. Yes, sir.

Q. The final receipt you gave me the date of?

A. I don't know that I did. The final receipt was issued October 10th, 1899.

Q. When was it approved?

A. Approved for patent September 18th, 1900, and patented November 28th, 1900.

(Testimony of George D. Greene.)

Q. What is the next entry?

A. Cash Entry No. 6216, by Charles B. Sperry.

Q. What is the date of the sworn statement?

A. The sworn statement was made July 14th, 1899; the witnesses advertised were Thomas H. McConnell, Charles L. Griswold, Charles Sperry and M. B. Watson. The witnesses who appeared and gave testimony at the final proof were Thomas H. McConnell and Charles L. Griswold.

Q. That is Chauncey? A. Yes, sir.

Q. Were the questions propounded in this case the same as the others? A. Yes, sir.

Q. And were the answers in effect the same as in the other cases you testified to? A. Yes, sir.

Q. I will ask you to state to the court, if you please, what the date of the final receipt is in that case?

A. The final receipt was issued October 12th, 1899.

Q. What date was the entry approved by the general land office? A. August 7th, 1900.

Q. And the patent was issued when?

A. September 7th, 1900.

Q. Are these all of the entries you have?

A. These are all of the entries that were returned to our office.

Q. I will ask you to state if these are all of the entries that are in controversy in this hearing?

A. Of course I do not know, Mr. Bickford, what is in controversy here, all I know is what the Commissioner of the general land office returned to our office.

(Testimony of George D. Greene.)

Q. And you have brought in here and testified to all of those that the Commissioner of the general land office attempted? A. Yes, sir.

Q. In the making of these final proofs and in the making of these entries, you have well established rules in your office by which you are guided in making these entries? A. Yes, sir.

Q. You are under the direction of the Interior Department at Washington, D. C.? A. Yes, sir.

Q. And the Commissioner of the general land office? A. Yes, sir.

Q. And these people actually appeared at your office as appears in the papers? A. Yes, sir.

Q. They appeared in the regular, in the usual order of business? A. Yes, sir.

Q. You are quite sure that no two of them appeared twice there, no entrymen?

A. I know that. I will have to take that back, there is two or three proofs I did not take, and if there is any of them down here I could not be sure of them, although that was only in two or three cases.

Q. That was only in two or three cases?

A. Well, I was sick here, played out, for two or three days, I was not loafing around the club or hunting chickens, I was sick in bed.

Q. When did you hear of any irregularities under the Timber and Stone Act, if you ever did hear of any?

A. The first irregularity I ever heard of was when Mr. Zeverly came out to make an investigation.

(Testimony of George D. Greene.)

Q. When was that?

A. I could not state, in fact, I did not know of any irregularity when he first came, he came to the office and looked through the record and then it was some time after that before I learned that there were any irregularities in these entries.

Q. You did not learn there were any irregularities, you just heard there were alleged irregularities?

A. Yes, sir.

Q. Was that at least a year after these entries were made?

A. I should think so, I have no particular date in mind.

Q. Wasn't it at least a year and four months after the time the entries had been made?

A. It may be, I could not place when these reports first came to me at any time; the first positive knowledge that I had was when Mr. Zeverly wrote for a list of these timber and stone entries and requested us to send them to Anaconda; we at once prepared a list and sent it to him, and it was shortly before, or a few days before that, perhaps a week, that we heard there was an investigation going on with reference to these entries.

Q. At that time did Mr. Zeverly state in his letter to you that he thought that there were irregularities?

A. I don't think so, I think he just simply requested that they be sent to him at Anaconda; I know we

(Testimony of George D. Greene.)

worked real hard that night to get them out to him, that is what makes that so strong in my mind.

By Mr. MAYNARD.—It is stipulated and agreed by counsel for the respective parties that in the Charles Cloutier papers, which were used by counsel for the defendant as a precedent case, by which all the other papers in a different entry were compared, simply referred to the blanks that were issued by the commissioner of the land office and used by the register and receiver of the local land office in the proceedings which commenced with the sworn statement, and which ended with the issuance of the receiver's final receipt, and the certificates of location and other papers filed in the office which make up the record of the Charles Cloutier case are confined entirely and solely to that case and are not to be considered as embraced in the case for the purpose of comparison.

Mr. BICKFORD.—The intention of the defendant in presenting the Charles Cloutier case to the Court is for the purpose of putting before the Court all the papers which are used and all the terms which are prescribed by the Department of the Interior for the purpose of making entries under the Timber and Stone Act, and in compliance with the law it is generally so designated. It is intended by using the Charles Cloutier case to not only present to the Court the sworn statement of Charles Cloutier, but also to show thereby that Charles Cloutier complied with the laws of the United States with reference to timber and stone entries, but also that

(Testimony of George D. Greene.)

the sworn statement was made by the entryman as required by law and in the form prescribed by the Department of the Interior; in presenting the other papers in the case it is intended to show a compliance on the part of the said Charles Cloutier with all of the laws of the United States with reference to the said Timber and Stone Act, and also to place before the Court the evidence introduced by him and his witnesses at the time of the final proof made by him, and to place before the Court not only the evidence of the entryman, but of his witnesses given at the time when his final entry was made. It is intended by the introduction of the final receipt to show that Charles Cloutier made the payment required by law and that the same was received by the officers of the United States Government in the manner required by the laws of the United States and the regulations issued and promulgated thereunder, and to show by these papers a compliance on the part of the entryman with all of the laws of the United States with reference to this class of entries. It is intended further to show by referring to each entryman that each entryman has done substantially the same as Charles Cloutier, with reference to his proofs and entry, and it is intended to prove by each of the entrymen and by each of the witnesses sworn upon their behalf before the United States land office, that the law, as well as the rules and regulations of the land office, have been complied with, by each of the entrymen, whose entries have been testified to.

(Testimony of George D. Greene.)

Mr. MAYNARD.—All the object that I have in what I suggested by way of stipulation at the beginning was to have it appear upon the record that there were a number of acts in the Charles Cloutier entry which were peculiar to that entry itself and relate in no way to any of the others, and that counsel so understands the same and makes no claim that the other papers contain the exceptional cases, and he is using that as a base of comparison, simply intended to use the blanks that were furnished by the Government and the local land office.

Mr. BICKFORD.—That is about right, I would amend it, however, by saying that the only paper that I know of in the Charles Cloutier case which it is not intended to use in any of the other cases is the Military Bounty Land Warrant, being payment for part of the purchase price of the land.

Redirect Examination.

(Mr. MAYNARD.)

Q. Now, then, the first paper that is filed is the printed blank known as the "Timber and Stone Act sworn statement," is it not?

A. Yes, sir; form 4-537 is the official designation of it.

Q. And that is the same blank that is used in every case and is identically the same in each and every one of these cases with the exception of the name?

A. The names and descriptions.

Q. So that would be used in every case?

(Testimony of George D. Greene.)

A. In every case that is the initial step.

Q. Then what is the next step?

A. The next step is the issuance of a notice for publication, and posting, a copy is posted in the office and another copy is sent to the paper, form 4-357; as I stated, a copy of that properly filled out with the names of the witnesses and another copy sent to a newspaper of general circulation nearest the land.

Q. What is your next, Mr. Greene?

A. I stated that the next step was the issuance of the notice for publication containing the names of the witnesses and the date of final proof; one copy of which is posted in the office and the other sent to a newspaper of general circulation nearest the land for publication.

Q. And that is done in each and every case?

A. In each and every case, yes, sir.

Q. And would be the same in every case so far as the procedure is concerned?

A. Yes, sir, the same in every case, with the exception of the date and the names of the witnesses, and a description of the land.

Q. Who, as a matter of fact, made that out in your office?

A. Miss Payette made most of these, she is one of the clerks in the office, she attends to all notices.

Q. That is her business? A. Yes, sir.

Q. Where would she get these names of the witnesses and the description?

A. The parties would frequently give them either

(Testimony of George D. Greene.)

to her or direct to me and I would hand them to her; frequently they gave them to her, and at other times they gave them to me if I was not busy with something else just at that moment I would take them down and hand the matter over to her, and if I happened to be real busy and could not get away, I would tell them to give her the names of their witnesses and she would take them down and fill out the notices concerning it and bring it over to my desk and I would sign it.

Q. Do you mean the entrymen and the entrywomen when they came into the office would bring in these four witnesses?

A. They would bring the names and the description of the land.

Q. And the description of the land?

A. Yes, sir, that is true of all kinds of entries, homesteads, deserts, pre-emptions, and etc.; the claimant names the witnesses that they will have and they can use in making their final proof.

Q. On what kind of paper is this?

A. Any kind of paper—in homesteads.

Q. In timber and stone?

A. In timber and stone they just simply write them down on a blank slip of paper or give the names verbally to me or her; sometimes they would give them to Mr. Deering, who is the chief clerk, if he happened to be there at the time, at the counter, I mean.

Q. Now, then, you say that this slip of paper upon which a description of the land and the names of the

(Testimony of George D. Greene.)

witnesses written on the paper could be handed either to you or to Mr. Deering, who is known as the chief clerk, or to Miss Payette, who, as a matter of fact, had charge of that particular portion of the office work?

A. Yes, sir; the paper might not contain a description of the land, that would be in the sworn statement; these (witnesses' names) mostly would be written on a blank piece of paper, and when the sworn statement was handed over to her, the sworn statement would contain all the information necessary, except the names of the witnesses, which would be on the blank piece of paper, if handed to her that way, if she took them, or they would be given to her orally by the applicant himself or herself.

Q. But the sworn statement is made out by the officers of the Land Department?

A. No, we never made them out, the applicants were bound to bring them to the office already prepared.

Q. Is that a rule of the office?

A. Oh, yes, we are not allowed by the rules of the general land office to make out papers except in cases where the applicant is poor and unable to employ an attorney.

Q. That is, you are not permitted to cheat the land attorneys out of their jobs?

A. The idea is we have enough office work to do without doing attorney's work; it takes time to do this work, which we have not got to spare; people who make applications to enter land are obliged to have the ap-

(Testimony of George D. Greene.)

plications prepared either by themselves or some attorney.

Q. So when the entryman enters your office that statement has been made out before the entryman enters the office?

A. Almost uniformly before they enter the land office.

Q. By some land attorney or somebody working for them?

A. Or by themselves, if they know how to fill them not; quite frequently, I believe, they are filled out by the applicant.

Q. Now, there would be no law against their filling the same out of your office?

A. Oh, no, not if they wanted to go in there and sit down, I think that may have been done in one or two cases.

Q. That may have been done in one or two cases?

A. I think that may have been done in one or two cases, yes, sir.

Q. But as a rule they go in there with their sworn statement already prepared, who prepared them you don't know? A. Oh, no.

Q. Nor don't ask?

A. Never ask that, that is really none of our business who prepares the papers, the only question for us is, as to whether it is in proper form or not.

Q. Well, then, when they come in with a description, is it a matter of practice, was it a part of your business

(Testimony of George D. Greene.)

to consult your maps to find out whether or not the land had been taken up?

A. Yes, sir, look at the maps and the tract books to see whether the land is vacant, that was only a moment's work; just open the plat and refer to the tract and the description in the application, it is only a few minutes' work, a few minutes, perhaps, to see whether the land is entered or vacant.

(Mr. BICKFORD.)

Q. At the same time you put down the entry if it has not already been done? A. How do you mean?

Q. Why enter it on the plat book.

A. Not until we find out the land is vacant. If it is, we enter it at once the day it comes in.

(By Mr. MAYNARD.)

Q. Well, what other way would there be of ascertaining the fact of whether or not a given tract of one hundred and sixty acres was open to location other than coming to your land office to consult your books there and the maps?

A. Quite frequently they write for a copy of the plat; for instance, in Ovando, all over the district, when writing they want to know the status of a certain township, and they write to learn the vacant land in it, we have small township maps, we just check off the land that is entered and send out that plat, and anyone who knows the corners can very readily determine what land is vacant or not in that way.

(Testimony of George D. Greene.)

Q. You say one who knows the corners?

A. Yes, the section corners as marked upon the ground; you see, when the survey is made, every section corner is marked either by a stone or a stake; if it is properly marked there is a stone and four holes, one on each side, north, south, east and west, about four to six feet apart with a stone in the center; then there are certain marks upon that stone or stake from which an experienced person can tell just exactly what section corner that is then by having a section map.

Q. By having a section map?

A. By having a section map and having a compass one can locate the corners and run out the whole township very readily, who is not a surveyor; I can take a map myself and run out a township if I can discover one corner, without very much trouble; I did that when I was with the Mineral Land Commission, a member of the Mineral Land Commission.

Q. Well, you said that an experienced person with a compass and with his map, he could run the lines if he could get the numbers, get a starting point?

A. Yes, and could read the section corners.

Q. What do you mean by reading the section corners?

A. Well, there are certain marks upon the section corners; for instance, they run up from the south, you take section 31, take the northeast corner of section 31, will have one mark on it, a straight mark on it, that is one mile from the south, then it will have five marks

on the east side, that is five miles from the east line, and one mile from the south; then go over to the northeast corner of section 30 and that would have two marks on the south side, that would be two miles from the south line and five on the east side of the stake, which would be five miles from the east, and so on all through; and then there is in addition to that the half-mile corner, there is another stone which is marked the 1/4; that is the same mark on every section, in that they don't make any other distinguishing marks, it is simply what we call the quarter corners; then you must run half a mile directly east and you would strike the section corner, and you could determine from that section corner just where you were from this mark I have described, that is, you would know what corner you were at on the south side of that section. It is very easy to read them when one becomes familiar with them.

Q. Yes, on the very same principle that it is easy to do a thing if you know how?

A. Yes, certainly, but it is not very much trouble to know how to do this; one can take a map properly marked and his compass and understand how to pace off a mile—

Q. You have got to have your compass, you have got to have your map and you have got to know how to pace?

A. Yes; that is, a stranger to the township would, one that was familiar with the township would not; those who were familiar with the township at the time

(Testimony of George D. Greene.)

I was surveying could locate these corners without any trouble, could know where they were located.

Q. You have got to know the proper starting point in the first place?

A. Then the next point you have got to know when you get to the corner and enough about the signs to apply it to read them.

Q. That is four things? A. Yes.

Q. That is five or six, I guess?

A. Yes, but it is not hard to learn them.

Q. Would you think there would be one man in a thousand that had no experience that could do that?

A. There would not be one man in two that never knew anything about it, but there are a great many men that live up in this country where these surveys are made that can do it.

Q. (Mr. BICKFORD.) And the section lines are blazed?

A. Yes, if it is run through timber there is a trail blazed there.

Q. (Mr. MAYNARD.) Why would you have to have a compass?

A. In order to determine which way was east and west, strike the corners, I would have to; if I were living right in the township I don't suppose I would need a compass, I would then know the directions, but to set a stranger down in a township, he is not sure of the directions and you cannot strike east and west close

(Testimony of George D. Greene.)

enough to find the section corners which you are not familiar with.

Q. (Mr. BICKFORD.) You mean all of these lines are run north, south, east, west?

A. Yes, I supposed everybody knew that section lines were run in that way.

Q. (Mr. MAYNARD.) Now, what kind of a job could an uneducated, ignorant man do who finds himself alone in a wild, rocky and mountainous country in a strange part of the woods, that he had no acquaintance with or was not familiar with, except as he might have gone in hunting without any compass or any except possibly a township map; what kind of a job could he do in fixing the lines, or a description of one hundred and sixty acres of land in such a place as that?

A. I could not answer that because I would not know the degree of ignorance, but up there a great many of these men we call ignorant and unlettered are very bright, particularly if they were living in the country, when it comes to locating the section corners, they might do that without experience; when I was in the Mineral Land Commission in going all through a certain portion of these districts trying to find section corners in order to classify lands, we found a great many men that might be called ignorant and unlettered that would give every one of us pointers in which to find the section corners of the neighborhood in which we lived.

Q. That would be an exceptional case?

A. I was astonished to find a great many having

(Testimony of George D. Greene.)

a knowledge of section corners; in fact that was so prevalent that whenever we had to hunt around for a section corner we would ask the first man we struck that was a resident of the community and he would take us right to it.

Q. He could find it without any maps?

A. He would go right to the section corner.

Q. And could go to the next?

A. Easily tell us the next, but after we got one or two we would not care to hunt for any more, that was all we wanted.

Q. The man that you mean, the man that you are not referring to, is the man who lives right there?

A. Yes.

Q. And is familiar with the section corner as a landmark the same as he would be acquainted with his house or his barn?

A. Yes, they seem to be very familiar all around.

Q. I am not talking of any such case as that, I am talking about where such a man if you placed him about twenty-five or thirty or forty miles away from his home and is a stranger in the parts, knows nothing of that wild mountain country, except a few times in his life he may have traversed that neighborhood in hunting and he has no compass, nor has he anything at all except possibly a township map, what could such a man do toward definitely fixing some hundred and sixty acres of land?

A. I could hardly answer that question, Mr. Maynard,

(Testimony of George D. Greene.)

if a man actually knew nothing at all and was out there and never had had any experience whatever in surveying and no knowledge whatever of the way section corners are placed, I would say he would have a very hard time locating it.

Q. It would be impossible, would it not?

A. Very nearly, it would not be impossible, but would be very improbable.

Q. Well, why would it not be simply impossible for such a man under the circumstances to do any such thing as that?

A. It would be pretty hard for him to do it, I don't want to say it would be impossible.

Q. I suppose that is on the same principle that a man might drop out of the top of the Montana Club and not kill himself?

A. I don't think that is any comparison; it is most improbable. I think the falling off—considering the beverages they use up in the club there, whether that would be very improbable or not, after a fellow once got up there, the improbability would be of his getting up on the roof at all.

Q. Well you would regard it as an extraordinary feat, would you not? A. I would.

Q. (Mr. BICKFORD.) Do you mean to fall off or to locate the land?

A. I mean to find the section lines; in the cases I have enumerated I think it would be very extraodinary

(Testimony of George D. Greene.)

for a man of that character to go out and locate for himself.

Q. (Mr. MAYNARD.) Now, as a matter of fact, Mr. Greene, did you know all the names of these witnesses that were handed in?

A. Why some of them I would, some of them are handed to me, but there are others, a great many that I would not know anything about at all until the time came to make final proof.

Q. The case stands somewhat different then than if all the names of the witnesses had been handed to you direct and you had made a personal examination of them in each and every case?

A. Well we never examine the witnesses—the witnesses never appeared when the sworn statement was filled; I understand you are questioning me now about when the sworn statement was filled, the witnesses do not appear at that time.

Q. I am perfectly familiar with that, I do not have to be told now in regard to the details of the business, I am after information now, I am asking you the question as to whether or not the case stands differently by reason of the fact that when the final statements were made and the names of these four witnesses were handed in as the claimant's witnesses they were not handed to you in person for examination at the time?

A. No, sir.

Q. But they were given to your chief clerk and to

(Testimony of George D. Greene.)

Miss Payette so that you would not have an intimate knowledge of that fact that you would have had if they had all been handed to you and been personally examined by you?

A. No, I never examined all the names.

Q. Did you at the time notice the fact that of some thirty-eight or thirty-nine entries that were made during this season the majority of them had as a witness Mr. C. L. Griswold?

A. I knew that at the time he appeared to make proof of course, because I took most of the testimony, but when the witnesses' names were handed in I hardly ever knew who the witnesses would be.

Q. Didn't the fact that he appeared as a witness in the majority of these cases attract your attention?

Mr. BICKFORD—We object to the supposition of counsel that Mr. C. L. Griswold appeared as a witness in the majority of the cases, it being shown by the testimony that he appeared in eight of the cases out of the thirty-seven and not a majority of them.

A. Yes, that did strike my attention toward the last, Mr. Maynard, that he appeared a great many times as a witness.

Q. What did you do?

A. I inquired into it, and they told me they had him as a witness because they wanted him to locate the legal subdivisions, some of them said that, that he was familiar with all that country, and they wanted some one who knew the subdivisions, and knowing that it

(Testimony of George D. Greene.)

was necessary to get some one familiar with these subdivisions to locate them, I did not think much of it, in fact, having someone who was familiar with the ground locate them, it would be very natural they would have that man as a witness, because they would not have to get anyone else to go on the ground to make the examination; that was the explanation they gave me, and I believed it; I asked two or three people about that, and several days after that I believe I asked Mr. Griswold, I had asked some of the others and that explanation was given me several times in the same way, and I thought it very plausible, I thought it was very natural, they sort of appeared to tell the truth; I liked Mr. Griswold very well at that time, I thought he was a good man, he gave his testimony in good shape and apparently honest, and is one of the nicest men that ever came into the office to do business with at that time.

Q. You say at that time, have you seen anything in his conduct or have you any personal knowledge since that time that has led you to change your opinion?

A. I do not like to say anything about that, Mr. Maynard, it is a matter that I have not fully made up my mind to yet, I have not heard enough; all I could make up my mind concerning would be from mere reports, nothing I have seen.

Q. I mean of your own personal knowledge?

A. Not of my personal knowledge, no, sir.

Q. What is the next step in the case?

(Testimony of George D. Greene.)

A. We quit at the notice, didn't we?

Q. Yes.

A. Well, the next step after that was, of course, a sending out of the notice for publication in the same form I have read, which is posted in the office, and the next step was the appearance of the claimant and two of the four witnesses advertised, in the office on the day set in the notice to offer their final proof.

Q Very well, then, in the Charles Cloutier case, the testimony of the claimant, question No. 5, in the printed blank is, "When and in what manner was such inspection made"?

A. Is that in the claimant's testimony, Mr. Maynard?

Q. Yes, sir, question No. 5 is, "When and in what manner was such inspection made," and the answer is, "About May 15th, by walking over the land and carefully examining it, I was familiar with the land some time ago."

Now, then, question No. 12 is, "What is the estimated market value of the timber standing upon this land?" and the answer is, "From six to eight hundred dollars."

Now, then, in the testimony of the witnesses, in answer to question No. 4, which is, "When and in what manner was such inspection made?" the answer is, "About the 15th day of May, by walking all over the land and examining it carefully, have been familiar with the land for over three years."

Question No. 11 is, "Do you know whether the applicant has, directly or indirectly, made any agreement or

(Testimony of George D. Greene.)

contract, or in any way or manner, with any person or persons whomsoever, by which the title which he here may acquire from the government of the United States, may inure in whole or in part, to the benefit of any person except himself," and the answer is, "He has not to my knowledge, I feel certain of that."

Q. And the answer of C. L. Griswold to these same questions, namely, question 4 and question 11, are identically the same; now, then, you don't mean to say, do you, Mr. Greene, that the testimony of these claimants in answer to question No. 5 is substantially the same in each and every case as in this Cloutier case?

A. Well, to all practical purposes it would be the same, they would express familiarity with the land, some of them would give the date they went on it, others for a long time before, and others for ten or fifteen years, but the practical effect of all the questions and answers were they were familiar with the land, that is all the law requires.

Q. In answer to question 12, "What is the estimated market value of the timber standing on the land?" the witness in this case said, "From six to eight hundred dollars."

A. That varied some, Mr. Maynard.

Q. Well, then, I think the only fair way, Mr. Greene, to the parties in this case, is to take up each of these cases separately and give the specific answers to these two questions on each of these claims, if you do not wish to have it go into the record that they swore to the same thing?

(Testimony of George D. Greene.)

A. Oh, I do not swear to that, I have explained that, I am perfectly willing to go through the record.

Q. I will ask you, Mr. Greene, to take up each of these cases and read from each one of them the answers to these questions?

A. There appears to have been two blanks used, two different kinds of blanks. I don't believe the numbers are all the same, but as I stated, the effect of the testimony is just the same.

(The witness reads:)

In cash entry No. 6121, John Gilles testified in answer to question No. 5:

"Q. When, and in what manner was such inspection made?"

"A. About the 15th day of May, 1899. I made the inspection by walking all over the ground and examining it carefully."

Then in answer to question 12:

"Q. What is the estimated market value of the timber standing on this land?"

"A. There are about 700,000 or 800,000 feet of timber; value between seven and eight hundred dollars."

(By the WITNESS.)

Q. Now, is there any other questions you wish in the testimony besides these two, Mr. Maynard?

Mr. MAYNARD.—That will do for those, and you need not repeat the questions where you find that they are the same form.

The WITNESS.—In the testimony of the witness, C.

(Testimony of George D. Greene.)

L. Griswold, in the same cash entry, he said, in answer to question 1:

"A. About the 15th day of May, 1899, I have been familiar with the tract, over it a number of times before."

The answer to question number 11 by Mr. Griswold is:

"A. Not to my knowledge, I am sure he hasn't.'

The witness, Charles Cloutier, in answer to

"A. About the 15th day of May, 1899, I have been familiar with the tract and over it a number of times before."

Then in answer to question number 11 he said:

"A. Not to my knowledge, I am sure he has not."

The WITNESS.—In cash entry No. 6134, by Martha M. Doney, the claimant, Martha M. Doney, in this entry, testified in answer to question No. 5:

"A. I was over the land in the summer of 1898, and many other times, walked all over it."

The WITNESS.—In answer to question No. 12, she says:

"A. Six or seven hundred dollars."

The witness, Henry Faust, in answer to question No. 4, said:

"A. May 21st, 1899, by walking all over it, have been familiar with the land for five years."

And in answer to question No. 11 the witness said:

"A. Not to my knowledge."

(Testimony of George D. Greene.)

The witness, Robert Dixon, in this entry testified in answer to question No. 4:

"A. About May 15th, 1899, I was all over it."

And in answer to question No. 11 he testified:

"A. No, not to my knowledge."

By the WITNESS.—In Cash Entry No. 6135, Edward D. Doney, testified in answer to question No. 5:

"A. By going all over the land in the month of May."

In answer to question 12 he states:

"A. About one thousand dollars, one million feet at one dollar per thousand."

The testimony of Robert Dixon in this entry in answer to question No. 4 is:

"A. About May 15th, 1899, I was all over it."

And in answer to question 11 he said:

"A. Not to my knowledge."

The witness Henry Faust, in answer to question No. 4, says:

"A. May 21, 1899, by walking all over it; have been familiar with the land for five years."

In answer to question No. 11 he says:

"A. Not to my knowledge."

By the WITNESS.—In cash entry No. 6136 by Thomas Pelkey, the claimant testified in answer to question No. 5:

"A. In the month of May, 1899, by going all over the ground and examining it carefully."

In answer to question No. 12 he says:

"A. From seven to eight hundred dollars."

C. L. Griswold testified in answer to question No. 4:

(Testimony of George D. Greene.)

"A. May 24th, 1899, and on or about August 5th, 1899, on foot, by going all over it."

In answer to question No. 11 he says:

"A. No, not to my knowledge."

The witness B. Frank Chattin testified in answer to question No. 4:

"A. In the month of May, 1899, by going all over it and examining it carefully."

And in answer to question No. 11 he said:

"A. He has not."

That was more positive than most of them were willing to testify.

By the WITNESS.—In cash entry No. 6137 by B. Frank Chattin, the claimant testified in answer to question No. 5:

"A. In the month of May, 1899, by going all over the land and carefully inspecting it."

And in answer to question No. 12 he said:

"A. From seven to eight hundred dollars."

The witness C. L. Griswold in answer to question No. 4 said:

"A. Several times in the past two or three years, on the 24th day of May, 1899, and on the 5th day of August, 1899."

And in answer to question No. 11 he said:

"A. He has not to my knowledge."

The witness Thomas Pelkey in this entry testified in answer to question No. 4:

"A. In the month of May, 1899, by going all over it and examining it carefully."

(Testimony of George D. Greene.)

And in answer to question No. 11 he testified:

"A. He has not."

By the WITNESS.—In cash entry No. 6187 by Edgar Lehman the claimant testified in answer to question No. 5:

"A. About June 20th last I visited the land and examined it."

And in answer to question No. 12 he said:

"A. About twelve hundred dollars."

The witness C. L. Griswold in said entry testified:

"A. I have been on it several times during the past four years, the last time August 25th, 1899."

And in answer to question No. 11 he says:

"A. He has not to my knowledge."

In this entry the witness Lelia T. Bryan said in answer to question No. 4:

"A. I was over the land and examined it on June 19th, 1899."

And in answer to question No. 11 she says:

"A. I think not."

By the WITNESS.—In cash entry No. 6162 by Charlotte S. Hoyt, the claimant in answer to question No. 5 testified:

"A. Just before I filed on it and again on July 30th, 1899, by going all over the land; I have been familiar with the land for the past fourteen years."

In answer to question No. 12 she says:

"A. There are about 500,000 feet of timber worth five hundred dollars."

(Testimony of George D. Greene.)

In this entry the witness Elijah W. Hoyt testified in answer to question No. 4:

"A. I have been all over this land frequently for the past fourteen years, the last time August 26th, 1899."

And in answer to question No. 11 he testified:

"A. Not to my knowledge, she has not."

The witness H. C. McNally in this entry in answer to question No. 4 said:

"A. I have been all over the land occasionally for the past sixteen years, the last time August 26th, 1899."

And in answer to question No. 11 he testified:

"A. Not to my knowledge."

By the WITNESS.—Cash entry 6161 the claimant Elijah W. Hoyt testified in answer to question No. 5:

"A. I have been over the land frequently during the last fourteen years, the last time on August 26th, 1899."

And in answer to question No. 12 he said:

"A. About 800,000 feet valued at eight hundred dollars."

And in this entry the witness H. C. McNally testified in answer to question No. 4:

"A. I have been all over the land occasionally for the past sixteen years, the last time August 26th, 1899."

And in answer to question No. 11 the witness said:

"A. Not to my knowledge."

In the same entry Charlotte S. Hoyt testified in answer to question No. 4:

"A. In the month of May, 1899, and again in July 30th, 1899, by going all over the land."

(Testimony of George D. Greene.)

In answer to question No. 11 she testified:

"A. He has not."

By the WITNESS.—Cash entry No. 6188 by Lelia T. Bryan, in answer to question No. 5 she said::

"A. On June 18th, 1899, I visited and carefully examined the land."

And in answer to question No. 12 she testified:

"A. About eight hundred dollars."

In this case C. L. Griswold in answer to question No. 4 testified:

"A. I have been all over the land several times during the past five years, the last time August 18th, 1899."

And in answer to question No. 11 he said:

"A. She has not to my knowledge."

In this case the witness Edgar Lehman testified in answer to question No. 4:

"A. I have been over the land several times, the last time June 22d, 1899."

In answer to question No. 11 he testified:

"A. I think not."

By the WITNESS.—In cash entry No. 6199 by May Hawthorne, in answer to question No. 5 she stated:

"A. On July 15th, 1899, and again on September 14th, 1899, by going all over the land and examining it carefully."

Then in answer to question No. 12 she testified:

"A. About five hundred dollars."

In this case Chauncey L. Griswold testified (Now here

(Testimony of George D. Greene.)

the questions have changed to No. 3), in answer to question No. 3:

"Q. In what manner was such inspection made?

"A. On the 18th day of July and several times previous by going all over the land."

And in answer to question No. 10 (this number is changed again) he said:

"Q. Do you know whether the applicant has directly or indirectly made any agreement or contract in any way or manner, with any person whomsoever, by which the title which he may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except himself?"

"A. She has not to my knowledge."

And Louis S. Jackaways, the other witness, testified in answer to question No. 3:

"A. I was over it three or four times in April, June and July, 1899."

And in answer to question No. 10 he states:

"A. Not to my knowledge."

By the WITNESS.—In cash entry No. 6269 by Levi J. Cyr, the claimant in this entry testifies in answer to question No. 5:

"A. On September 23d by going all over the land, and carefully examining it."

And in answer to question No. 12 he said:

"A. Four or five hundred dollars."

J. B. Seeley, witness in this entry, testified in answer to question No. 3:

(Testimony of George D. Greene.)

"A. I have been very familiar with the land for the last eight years; last examined the land about September 12th, 1899."

"A. He has not to my knowledge."

The witness Vital Cyr, in answer to question No. 3, states:

"A. On September 23d, 1899, by going all over it and examining it carefully."

And in answer to question No. 10 he stated:

"A. He has not to my knowledge."

By the WITNESS.—In cash entry No. 6268 by Vital Cyr, the claimant testified in answer to question No. 5:

"A. On the 23d day of September, 1899, by going all over the land and carefully examining it."

And in answer to question No. 12 he said:

"A. About one thousand dollars."

The witness Levi B. Cyr in this case testified in answer to question No. 3:

"A. On September 23d, 1899, by going all over the land and examining it carefully."

And in answer to question No. 10 he stated:

"A. Not to my knowledge, I don't think he has."

J. B. Seeley, the other witness, testified in answer to question No. 3:

"A. I have been familiar with the land for eight years; I last examined it about December 12th, 1899."

In answer to question No. 10 the witness stated:

"A. Not to my knowledge."

By the WITNESS.—Cash entry No. 6227 by Lizzie

(Testimony of George D. Greene.)

Dodd, the claimant testified in answer to question No. 5:

"A. On July 22d, 1899, and on September 15th, 1899, by walking over it and carefully examining it."

And in answer to question No. 12 the witness said:

"A. About eight hundred dollars."

The witness Hiram Dodd in this case testified, in answer to question No. 3:

"A. I walked all over the land and inspected it carefully July 22d, 1899."

And in answer to question No. 10 the witness stated:

"A. I think not."

The witness M. B. Watson, testified in answer to question No. 3:

"A. I walked over the ground and inspected it carefully July 18th, 1899."

And in answer to question No. 10 the witness said:

"A. I think not."

By the WITNESS.—In cash entry No. 6226 by Matilda Dodd, the claimant testified in answer to question No. 5:

"A. On the 22d day of July, by walking all over the land and carefully examining it."

In answer to question No. 12 the claimant said:

"A. About eight hundred dollars."

The witness M. B. Watson in this entry testified in answer to question No. 3:

"A. I walked all over the land and inspected it carefully July 18th, 1899."

In answer to question No. 10 the witness stated:

"A. I think not."

(Testimony of George D. Greene.)

The witness Harrison Dodd said in answer to question No. 3:

"A. I was over the land on foot and examined it carefully July 22d, 1899."

And in answer to question No. 10 the witness said:

"A. I think not."

By the WITNESS.—In cash entry 6225 Harrison Dodd, the claimant, testified in answer to question No. 5:

"A. On July 22d, 1899, and again on September 15th, 1899, by walking over the land and carefully examining it."

And in answer to question No. 12 the witness stated:

"A. About eleven hundred dollars."

The witness M. B. Watson stated in answer to question No. 3:

"A. I was over the land on foot and inspected it carefully July 18th, 1899."

And in answer to question No. 10 the witness said:

"A. I think not."

The witness Hiram Dodd in this case, said in answer to question No. 3:

"A. By walking over the land and carefully examining it July 22d, 1899."

And in answer to question No. 10 the witness said:

"A. I think not."

By the WITNESS.—In cash entry No. 6224, by Hiram Dodd, the claimant, testified, in answer to question No. 5:

"On July 22d, 1899, and again on September 13th, 1899, by walking all over it and carefully examining it."

(Testimony of George D. Greene.)

And in answer to question No. 12 the claimant testified:

"A. About eight hundred dollars."

The witness, Harrison Dodd, in this case testified in answer to question No. 3:

"A. On July 22d, and September 15th, by going all over the land."

And in answer to question No. 10 he says:

"A. He has not to my knowledge."

The witness M. B. Watson in this case testified in answer to question No. 3:

"A. I went over the land on foot and inspected it carefully July 18th, 1899."

And in answer to question No. 10 the witness stated:

"A. I think not."

By the WITNESS.—In Cash Entry 6173, Albert Stewart, the claimant, testified in answer to question No. 5:

"A. I have been on the land off and on for the last six years, and was last all over it yesterday morning, September 4th, 1899."

And in answer to question No. 12 the witness stated:

"A. From seven to eight hundred dollars."

Louis Jackaways, in answer to question No. 4 (this is the other blank):

"Q. In what manner was such inspection made?"

"A. I have been over the land several times, the last time July 10th, 1899."

And in answer to question No. 11:

"Q. Do you know whether the applicant has directly

(Testimony of George D. Greene.)

or indirectly made any agreement or contract in any way or manner with any person whomsoever by which the title which he may acquire from the government of the United States may inure in whole or in part to the benefit of any person except himself?"

"To which he answered:

"A. He has not, I am quite sure."

Nels O. Opsata in answer to question No. 4 of this form testified:

"A. I have been over the land occasionally during the past twelve years, the last time September 5th, 1899."

And in answer to question No. 11 of this form he testified:

"A. I do not know, I think not."

By the WITNESS.—In Cash Entry No. 6205, by Harry C. Dorman, the claimant testified in answer to question No. 5:

"A. On July 10th, 1899, I went all over the land, examined it carefully."

And in answer to question No. 12 the claimant testified:

"A. About six hundred dollars."

The witness, Charles Moss, in answer to question No. 3 of this form, which is the same as question No. 4 of the other form, testified:

"A. I was over the land on foot and inspected it carefully July 10th, 1899."

And in answer to question No. 10 of this form, which

(Testimony of George D. Greene.)

corresponds with question No. 11 in the other form, the witness testified:

"A. I think not."

C. L. Griswold, in answer to question No. 3 of this form, stated:

"A. I have been over the land several times during the past four years, the last time August 15th, 1899."

And in answer to question No. 10 the witness stated:

"A. He has not to my knowledge."

Thereupon further hearing was continued until Tuesday, March 18th, 1902, at ten o'clock A. M.

Tuesday, March 18th, 1902, ten A. M.

Hearing resumed pursuant to adjournment.

Witness, GEORGE D. GREENE, was recalled for further examination.

Redirect Examination.

(By Mr. MAYNARD.)

Q. Now, brother Greene, we will proceed with the exciting business that we were in last night.

A. The next entry is Cash Entry 6164, by Albert F. Muchmore. In response to question five, the claimant testified:

"I had been over the land frequently for the last eight years. The last time in the latter part of July, 1899."

And in answer to question 12 he testified:

"Six hundred thousand feet, valued at six hundred dollars."

(Testimony of George D. Greene.)

The witness, Henry C. McNally, in making claimant's proof, testified, in answer to question 4 of this form:

"I have been acquainted with the land for the past sixteen years. I located the adjoining section nine years ago. The last time I was on the land was about six months ago."

Then in response to question 11 of this form, he states:

"I have no knowledge of any."

The witness, Guy W. Muchmore, in this proof, testified in answer to question four:

"I had been over it occasionally during the last eight years. The last time the latter part of July, 1899."

And in response to question 11 the witness testified:

"He has not to my knowledge."

The next is cash entry 6166, by Oliver E. Muchmore.

The claimant in answer to question five testified:

"In the month of May, 1899, and again on the 19th or 20th day of August, 1899, by going all over it, and locating the survey line."

The witness also in answer to question number twelve testified:

"Eight hundred thousand feet, value eight hundred dollars."

Albert F. Muchmore, one of the witnesses in this final proof, in answer to question four of this form, said:

"I have been over the land frequently during the last eight years; the last time in June, 1899."

(Testimony of George D. Greene.)

And in answer to question eleven the witness testified:

"Not to my knowledge."

The witness, Guy W. Muchmore, in answer to question four, testified:

"I have been over it frequently for the past eight years, the last time in July, 1899."

And in answer to question eleven, the witness said:

"Not to my knowledge."

In cash entry No. 6184, by John B. Catlin, the claimant testified in answer to question five:

"I was over the land and examined it on June 29th last."

And in answer to question 12 the claimant said:

"About six hundred or eight hundred dollars."

The witness, Leonard Barrett, in the final proof in this case, testified, in answer to question four, or rather in answer to question three of this form, being the same as question four in the other form:

"I rode over the land and examined it carefully June 29th, 1899."

And in answer to question ten of this form, which is the same as question eleven of the other form, the witness said:

"I think he has not."

The witness, in answer to question four, C. L. Griswold—this is the other form—testified:

"I have been over the land several times during the past eight years. The last time August 25th, 1899."

(Testimony of George D. Greene.)

And in answer to question eleven, he testified:

"He has not to my knowledge."

In cash entry No. 6185, by Belle Bryan, the claimant testified in answer to question five:

"I visited and examined the land in June, 1899, and again September 10th, 1899."

In answer to question 12 the witness testified:

"About one thousand dollars."

The witness, C. L. Griswold, in this proof in answer to question four, said:

"I have been over it several times during the past four years, the last time August 25th, 1899."

And in answer to question 11, the witness said:

"I do not."

In the testimony of Edgar Lehman, in this proof, the witness answered question four as follows:

"I have been over the land several times during the last four months, the last time June 20th, 1899."

And in answer to question 11 the witness testified:

"Not that I know of."

In cash entry No. 6167, by Elizabeth A. Muchmore, the claimant, testified in answer to question five in the month of May, 1899, and again in July, 1899, and again about the 19th or 20th of August, 1899, as follows:

"I went all over the land."

And in answer to question 12 the witness testified:

"Four hundred and fifteen thousand feet, valued at four hundred and fifteen dollars."

(Testimony of George D. Greene.)

The witness, Albert F. Muchmore, testified in answer to question four, as follows:

"I have been all over the land occasionally for the past eight years; the last time the latter part of July, 1899."

And in answer to question 11, the witness testified:

"Not to my knowledge."

The witness, Guy W. Muchmore, in this proof, testified in answer to question four:

"I have been over the land occasionally for the past eight years, the last time July 15, 1899."

In answer to question eleven, the witness said:

"Not to my knowledge."

The next is cash entry 6186, by Leonard Barrett.

The claimant testified in answer to question five:

"On the 29th of June, 1899, I visited the land and carefully examined it."

In answer to question twelve the witness testified:

"About eight hundred or a thousand dollars."

The witness, John B. Catlin, testified in answer to question four, in this proof:

"By going over (the words 'the land' is evidently left out) the land the 29th day of June, 1899."

In answer to question 11, the witness testified:

"No."

The witness, C. L. Griswold, in this proof, in answer to question four, said:

"I have been over the land several times during the past four years; the last time August 25th, 1899."

(Testimony of George D. Greene.)

In answer to question eleven, the witness said:

"He has not to my knowledge."

In cash entry 6174, by Nels O. Opsata, the claimant testified in answer to question five:

"I have been over the land frequently for the last twelve or thirteen years, the last time yesterday, September 25th, 1899."

And in answer to question twelve, the witness said:

"About seven or eight hundred dollars."

Louis A. Jakways testified in answer to question four:

"I have been over the land several times, the last time July 10th, 1899."

And in answer to question eleven, the witness said:

"No, not to my knowledge."

The witness, Alfred Stewart, in this proof, in answer to question number four, said:

"I have been over the land off and on for the last six years, the last time September 4th, 1899."

In answer to question eleven the witness said:

"No, I do not, I think not."

In cash entry No. 6165, by Guy W. Muchmore, the claimant testified in answer to question number five:

"I have been over the land frequently during the past eight years. I was over it last during the latter part of July."

And in answer to question twelve, the witness said:

"About eight hundred thousand feet, value eight hundred dollars.

(Testimony of George D. Greene.)

The witness, Henry C. McNally, said, in answer to question four:

"By being over the land occasionally for the last sixteen years; the last time in June, 1899."

And in answer to question eleven the witness said:

"No."

The witness, Albert F. Muchmore, in this proof, testified in answer to question four:

"By being on the land and going over it for the past eight years. I was over it last about July 20th, 1899."

In answer to question eleven, the witness said:

"He has not to my knowledge."

In cash entry No. 6202, by Harriet Watson, the claimant testified in answer to question No. 5:

"On the last day of June, 1899, I went all over the land and carefully examined it."

And in answer to question twelve, the witness testified:

"Between six and eight hundred dollars."

And in answer to question three of this form, the witness, C. L. Griswold, in this proof, testified:

"On the 15th day of June, 1899, and various times previous to that.'

And in answer to question ten of this form, he said:

"No, she has not to my knowledge."

The witness, M. B. Watson, in this proof, testified, in answer to question three:

"I have been over the land several times, the last time, September first, 1899."

(Testimony of George D. Greene.)

And in answer to question ten the witness said: "I think not."

Cash entry 6203 by Marion B. Watson, the claimant testified in answer to question number five:

"About July 12, 1899, and again about September 1st, by going all over the land and carefully examining it."

In answer to question twelve, the witness said: "Between seven and eight hundred dollars."

The witness, C. L. Griswold, testified in answer to question number three of this form:

"I have been over the land several times, and on the 15th of June, 1899, I inspected it on foot."

The witness, C. L. Griswold, also in answer to question number ten testified: "He has not to my knowledge."

The witness, T. B. Bryan, in this proof, in answer to question number three, stated:

"In June, about the 20th, I went all over this land and carefully inspected it."

And in answer to question number ten the witness stated in answer to that question: "Not to my knowledge."

In cash entry number 6204 by Charles H. Moss, the claimant testified in answer to question number five:

"On July 10th by going over the land and examining it carefully."

And in answer to question number twelve the claimant testified:

"About six hundred dollars."

The witness, C. L. Griswold, testified in answer to question number three of this form:

(Testimony of George D. Greene.)

"I have been over the land frequently during the past four years; the last time August 15th, 1899."

And in answer to question ten the witness said:

"He has not to my knowledge."

The witness, Harry C. Dorman, in his proof, testified in answer to question number three:

"I was over the land on foot and inspected it carefully June 10th, 1899."

And in answer to question number ten the witness testified:

"He has not to my knowledge."

In cash entry number 6208 the claimant testified:

"By Mr. MAYNARD.—Who was the claimant in that case? A. Katie Watson."

The WITNESS (Continuing).—The claimant testified in answer to question number five: "On June 12th, 1899, I went all over the land and carefully examined it and again about September first, 1899."

In answer to question number twelve the witness said:

"About seven hundred dollars."

The witness, C. L. Griswold, in this proof, testified in answer to question number three:

"I have been over the land several times, the last time July 15th, 1899."

And in answer to question number ten he said:

"He has not to my knowledge."

The witness, D. E. Watson, in this proof, testified in answer to question number three:

"The last of June, 1899, by going all over it."

(Testimony of George D. Greene.)

And in answer to question ten he said:

"A. She has not to my knowledge."

In cash entry 6211 by Edward Dodd, the claimant testified in answer to question number five:

"On the fifth of July, 1899, I walked all over the land at that time, and went through the land about the third of August, 1899."

And in answer to question twelve the claimant said:

"About eight hundred dollars."

The witness, Doc E. Watson, in this case, in answer to question number three, said:

"July 5th, 1899, walked over it."

And in answer to question ten the witness said:

"Not to my knowledge."

The witness M. B. Watson in this case in answer to question number three said:

"August 10th, 1899, by walking over it."

And the witness in answer to question number ten said:

"Not to my knowledge."

The witness M. B. Watson in this case in answer to question number three said:

"August 10th, 1899, by walking over it."

And the witness in answer to question number ten said:

"I do not."

In cash entry number 6213 by Doc E. Watson the claimant testified in answer to question number five:

"On the 5th of July went all over said land."

And in answer to question number twelve, the witness said:

(Testimony of George D. Greene.)

"About one thousand dollars."

In this case the witness, M. B. Watson, in answer to question number three, answered as follows:

"The tenth of August, walking over it."

And in answer to question ten the witness said:

"Not to my knowledge."

The witness, C. L. Griswold, in answer to question number three said:

"July 20th, 1899, walking over it."

And in answer to question number ten the witness said:

"Not to my knowledge."

In cash entry No. 6216 by Charles B. Sperry, the claimant testified in answer to question number five:

"About the first of July, 1899, and again on October 8th by going all over the land and carefully examining it."

In answer to question twelve the witness said:

"About seven or eight hundred dollars."

The witness, C. L. Griswold, in this case, testified in answer to question number three:

"I have been over the land several times, the last time July 10th, 1899."

And in answer to question ten the witness said:

"He has not to my knowledge."

The witness, Thomas H. McConnell, testified in answer to question number three:

"On October 1st, 1899, and June 1st, 1899, I visited the land and carefully inspected it."

And in answer to question number ten the witness said:

"No, sir, not to my knowledge."

(Testimony of George D. Greene.)

In cash entry number 6217 by Thomas H. McConnell the witness testified in answer to question number five:

"On June 1st, 1899, and again about August 1st, 1899, by personally visiting the land and carefully examining it."

And in answer to question number twelve, the witness said:

"Five or six hundred dollars."

The witness, Charles Sperry, in this proof answered question number three as follows:

"On or about July 1st, 1899, and October 8th, 1899, by visiting the land and personally examining it."

In answer to question number ten the witness said:

"I do not; he has not to my knowledge."

The witness, C. L. Griswold, in this proof, in answer to question number three testified:

"I was over the land on foot on or about July 10th, 1899."

And in answer to question number ten the witness said:

"He has not to my knowledge."

By the WITNESS.—That I believe concludes the testimony of all the claimants and witnesses.

Q. Now, yesterday, Mr. Greene, you referred to this villainous Government scrip.

A. Well, I didn't mean. I didn't intend that that should be taken down. That was aside to you. They are a very annoying thing in the office, and I use that term to express my annoyance.

(Testimony of George D. Greene.)

Q. I rather understood you that you didn't understand it?

A. I don't know much about it, Mr. Maynard. I don't look at that scrip very often. It is a matter for the receiver to look at. I had all I could do to look after my own duties in that regard. In several cases I received money, but I always turned it over to the receiver. I don't even examine it to estimate the amount of it.

Q. I want to know something about it myself. I don't know anything about it myself.

A. Miss Blaine is the best posted in regard to the scrip of anyone in the office.

Q. Who, Miss Blaine?

A. Yes, she is the receiver's clerk; and I suppose Mr. Hersky is pretty well posted in regard to it. All I know of it is what I told you yesterday. Scrip is received as cash for the value of $1.25 per acre on all cash payments for the land.

Q. I have got a minute here of the first one we had of anything of the kind there, and it is in the record of Nels O. Opsata?

A. Well, Charles Cloutier was also, I see here. There is quite a little scrip to that. Now, that claim of Opsata appears to have been almost exclusively of scrip. $325.00 in cash according to the receipt.

Q. What is that?

A. That Cloutier payment seems to have been made by the surrender of the certificates of location, numbers 857-B, for 40 acres, 858-B, for 37.40 acres; 846-D, for 80

(Testimony of George D. Greene.)

acres, 846-E, for 80 acres, and 735-C, for 80 acres, and $3.25 in cash, and here is the scrip.

Q. That is correct, is it?

A. Yes, instead of receiving money. That was received for its face value towards the payment of four hundred dollars that was due on this claim.

Q. Now, let me understand it—here is $400.00 that must be paid? A. Yes.

Q. By the purchaser of 160 acres of land, and instead of paying cash he offers you that scrip there?

A. Yes, sir.

Q. Do I understand that there is an act of Congress which authorizes that?

A. Oh, yes, and I can call your attention to the act now. We are authorized to receive that in lieu of money—that is, the receiver is, and he turns it in in his account just the same as money. I know there was—from hearing them talk the other day, that the receiver was short in his accounts seventy some odd dollars, and it was a scrip—a piece of scrip that had been mislaid in the general land office, but that was found and straightened out. It was received and accounted for just the same as money.

Q. Well, how many kinds of such papers are there that have been authorized by Congress to be received in lieu of money?

A. I cannot answer that question. There is so many of them. There is the Valentine scrip; the Girard scrip; the Military Bounty Warrants, the Soldiers' Additional Homestead, and the Forest Reserve. I cannot enumerate

(Testimony of George D. Greene.)

them all. They are all received in our office, as are the Military Bounty Land Warants.

Q. The Military Bounty Warrants are received?

A. Yes.

Q. Just what are they?

A. I don't know. I never examined them enough to tell. I never had occasion to examine into them at all. In fact, it is as I have told you. I have never had anything to do with the scrip until it came into this trial.

Q. Well, brother Walsh states that here is an act of Congress authorizing any man who served in the Mexican War and was honorably discharged, I presume, to enter one hundred and sixty acres of land, and Government land scrip was furnished him for that purpose by the Government in recognition of his services by the Government. Is that it, Mr. Walsh?

By Mr. BICKFORD.—I will state to counsel that the certificate itself shows that under the act of Congress the scrip is issued, and it shows upon its face just how much land the owner of the certificate is entitled to receive. The act confirming the holder—the land to the holder of the certificate. I never had occasion to look one over at all. I never saw one enough so as to know what its terms were. What little knowledge I have obtained is simply what I have heard from others talking about it when I happened to listen.

Q. Well, then, how many of these entryman paid instead of cash in this way?

A. Why, there was Cloutier.

(Testimony of George D. Greene.)

Q. Cloutier, he paid with it?

A. He paid almost entirely in scrip.

Q. And what do you call that now; just say what you mean. What is this, do you know what this thing is?

A. Yes, I think it is Surveyor's General scrip of Louisiana.

Q. Louisiana Surveyor General's scrip?

A. Yes, sir, as I understand it, that was issued in settlement of some claims down there by the Commissioner some time ago.

Q. Well, now, then in this entry matter; how many of these are there that were paid in scrip?

A. I think there was three. I will get the final receipts that will show it—they will show whether it was paid in cash or in scrip. There was received by surrender of certificate of location numbers 857 B, for 40 acres; 858 B, for 37.40 acres; 846 D, for 80 acres; 846 E, for 80 acres, and 735 C, for 80 acres, and $3.25 in cash on this Cloutier entry.

Q. Now, then, Mr. Greene, I will ask you if this is what you refer to, certificate of location number 846 E, which was issued to David Brannon. This is it, is it not?

A. Yes, that appears to be issued to David Brannon.

Q. Just read from the body of it here, Mr. Greene?

A. "Now, therefore, be it known that on surrender of this certificate to the register of any land office of the United States, the said David Brannon, or his legal representative, shall be entitled to locate in part satisfaction of said claim the quantity of eighty acres upon any of the

(Testimony of George D. Greene.)

public lands of the United States, subject to sale at private entry at a price not exceeding one dollar and twenty-five cents per acre, provided that such location shall conform to legal divisions and subdivisions."

Q. And that is in the surveyor general's office?

A. Yes, sir.

Q. That was approved by the general land office, May 3d, 1899, by Binger Hermann, Commissioner?

A. Yes. I wish to say that that provides for private entries, and that provisions is not carried out in Montana because there are no lands subject to private entry in Montana, and, therefore, this scrip cannot be located upon land as directly for that reason. It is received in payment of land at its face value at one dollar and a quarter per acre, and is treated as cash rather than a certificate of location.

Q. This certificate of location is signed by who?

A. Charles H. Dickinson, surveyor general of the District of Louisiana, and it is countersigned by Binger Herman, Commissioner of the general land office.

Q. Now, what was done with that certificate of location by Mr. David Brannon?

A. I presume he assigned it. He must have assigned it.

Q. Just read the assignment, please.

A. "For value received, I, Joseph G. Parker, legal representative of David Brannon, deceased, to whom was issued by the Surveyor General of Louisiana on the 28th day of November, 1898, under the third section of

(Testimony of George D. Greene.)

the Act of Congress of June 2, 1858, certificate of location No. 846 E, for eighty acres in part satisfaction of the claim of David Brannon, No. 362, in Regr. B. of Reports, dated June 7, 1813, of Comr. James O. Cosby, and which certificate was authenticated on the 3d of May, 1899, by the Commissioner of the general land office, do hereby sell and assign the same unto Charles Cloutier of Clearwater, State of Montana, and to his heirs and assigns, forever, and authorize him to locate the same and receive a patent therefor; my right to sell and assign the same being evidenced by documents deposited in the general land office, division D.

J. G. PARKER.

Two witnesses:

J. L. BRADFORD.

THOS. E. EVERSHED.

State of Louisiana,
Parish of Orleans.

On this 13th day of May, 1899, before me, the undersigned authority personally came Joseph G. Parker, to me well known, and acknowledged the foregoing assignment to be his act and deed; and I certify that the said J. G. Parker is the identical person who is the legal representative of David Brannon, dec'd, to whom the above-described certificate of location issued, and who executed the foregoing assignment thereof; and I further certify that at the time of making said assignment and this acknowledgment the said certificate was in

(Testimony of George D. Greene.)

the possession of him, the said J. G. Parker, and was duly presented before me.

Witness my hand and official seal this thirteenth day of May, A. D. 1899.

[Seal] WILLIAM H. WRIGHT,
Notary Public."

Q. And who is that acknowledged before?

A. William H. Wright, notary public.

Q. And the witnesses, who were they?

A. J. L. Bradford, and Thos. E. Evershed.

Q. Now, then, read the next assignment, Mr. Greene.

A. "I do hereby relinquish to the United States the within certificate of location No. 846 E, for eighty acres in part payment of the southwest quarter of the northwest quarter, north half of the southeast quarter and the southeast quarter of the southeast quarter of section twelve (12), township fourteen (14) north, range thirteen (13) west, Montana, located in the name of Charles Cloutier at the Helena, Montana, land office this first day of August, 1899.

CHARLES CLOUTIER.

Witnesses: P. M. COLLINS.
C. L. GRISWOLD.

Helena, Montana, August 1st, 1899."

Q. Now, then, Mr. Greene, you may state if the other certificates are to the same effect? Just name those, just identify them, that is all.

A. Certificate of location number 858 B. Certificate

(Testimony of George D. Greene.)

of location 846 D, for eighty acres. 857 B and certificate 735 C and 846 E. They are practically to the same effect. I would like to add that these certificates of location, where there is land subject to private entry, can be located directly upon the land, but there is no such land in this.

Q. But what?

A. There is no such land in this district.

Q. As what?

A. As land subject to private entry.

Q. Not under this location?

A. I say you cannot locate these directly upon lands in this district.

Q. But you stated that case, didn't you?

A. Yes, but I didn't say that it could be located upon land in this district. There is no land subject to private entry in this district. That is the only statement I wish to make in regard to it.

Q. This is called, Surveyor General Louisiana scrip?

Q. Now, how many of these entries were paid in whole or in part by this kind of scrip?

A. Well, I will have to go all through them in order to determine that, Mr. Maynard.

Q. Very well.

A. Nels O. Opsata, but that is another kind of scrip.

Q. Well, let us take that up?

A. Cash entry No. 6174 by Nels O. Opsata. Part payment was made by surrendering military bounty warrants, number 115,551 for 160 acres of land. This war-

(Testimony of George D. Greene.)

rant was issued to Benjamin F. Vennum, Private, Captain John Patterson's Co., 3d Regt., Ohio Vols., Mexican War.

Q. One hundred and sixty acres on the right and left-hand corners? A. Yes, sir.

By Mr. MAYNARD.—That may be copied into the record by the stenographer if there is no objection.

DEPARTMENT OF THE INTERIOR

160 acres 160 acres.

of the

UNITED STATES OF AMERICA.

Bureau of Pensions.

No. 115,551. No. 115,551.

It is hereby certified that under the act of March 3d, 1855, entitled, "An act in addition to certain acts granting bounty land to certain officers and soldiers who have been engaged in the military service of the United States." Benj. F. Vellum, Private, Capt. John Patterson's Co., 3d Regt., Ohio Volunteers, Mexican War, is entitled to locate one hundred and sixty acres, at any land office of the United States in one body and in conformity to the legal subdivisions of the public lands upon any of the public lands subject to sale at either the minimum or lower graduated prices.

Given under my hand and the seal of the Department the 1st day of June, 1899.

H. CLAY EVANS,
Commissioner.

160 acres.
Bounty land 160 acres.

(Testimony of George D. Greene.)

Note.—You can locate this certificate at any of the United States land offices, or it will be located for you by the general land office on the return of it with your request to that effect, endorsed thereon, specifying the State and land district in which you wish the location made. If you locate it, fill up and sign the following application.

To the register of the land office at ————————.

Locate this certificate in the ———— quarter of section ————, in township ————, of range ————.

Attest: ————,

————————

Register.

For value received, I, Benjamin F. Vennum, to whom the within warrant number 115,551 was issued, do hereby sell and assign unto Nels O. Opsata, of county of Deer Lodge and State of Mantana, and to his heirs and assigns forever, the said warrant, and authorize him to locate the same and receive a patent therefor.

Witness my hand and seal this 4th day of August, 1899.

BENJAMIN F. VENNUM.

Attest signature:

L. S. JORDAN.

H. C. PAKERMANN.

[The word "located" is perforated in the certificate.]

(Testimony of George D. Greene.)

State of West Va. }
Ohio County. }

On this 11th day of August, 1899, before me personally came Benjamin F. Vennum, to me well known and acknowledged the foregoing assignment to be his act and deed and I certify that the said Benjamin F. Vennum is the identical person to whom the within warrant issued, and who executed the foregoing assignment thereof.

[Seal] GEO. W. ROBINSON,
Notary Public in and for Ohio County, W. Va.

I do hereby relinquish to the United States the within Military Bounty Land Warrant No. 115,551, for 160 acres, in part payment of the southeast quarter of section two, T. P. 15 north, of range 13 west, Montana, located in the name of Nels O. Opsata at the Helena land office this 6th day of September, 1899.

Helena, Montana, September 6th, 1899.

NELS O. OPSATA.

Witnesses:

P. M. COLLINS.
JAMES DEERING."

Q. What do you call this?

A. This is the Military Bounty Land Warrant.

Q. There was just one of them? A. I don't know.

Q. I mean in that.

A. Yes, that is all there is in this. There was part

(Testimony of George D. Greene.)

payment made by this Bounty Land Warrant and then two hundred dollars paid in cash.

Q. Well, are there any more of these entries that were paid in scrip or partly paid that way?

A. I think there was. I suppose you desire the next one, where there is any scrip. There is one here, the case of Marion B. Watson, Mr. Maynard, which appears to have been paid for by scrip. This was a Military Bounty Land Warrant, in cash entry No. 6203 by Marion B. Watson; it appears that payment was made by surrendering Military Bounty Land Warrant No. 115,559 for 160 acres of land, and two hundred dollars in cash. That warrant is the same in every particular as the one in the case of Nels O. Opsata.

By Mr. MAYNARD.—You may read, Mr. Greene, the assignment of that Bounty Land Warrant, and trace it down.

A. It was issued to Elizabeth Davison, widow of George Davison, Private, Troop, I, U. S. Mounted Riflemen, Texas and New Mexico Indian War, 1855. The assignment reads as follows:

"For value received, I, Elizabeth Davison, widow of George Davison, to whom the within warrant to 160 acres of public lands was issued, do hereby sell and assign and transfer all my right, title and interest in and to said warrant unto Marion B. Watson of Bonner, Montana, and hereby authorize him to locate the same and receive a patent therefor.

(Testimony of George D. Greene.)

Witness my hand and seal at St. Louis, Mo., this 26th day of August, 1899.

ELIZABETH DAVISON,

Attest:

H. C. NEAL.

WILL H. YOUNG.

State of Missouri, ss.
City of St. Louis.

On this 26th day of August, 1899, before me personally appeared Elizabeth Davison, widow of George Davison, to whom the within warrant was issued, to me well known, and in my presence, signed and acknowledged the above transfer to be her own act and deed, for the purposes therein mentioned, and I certify that Elizabeth Davison is the identical person to whom the within warrant to 160 acres was issued, who acknowledged the assignment thereof in my presence.

[Seal]

C. D. GREENE, Jr.,
Notary Public.

Term ends, June 30, 1901."

The relinquishment reads as follows:

"I do hereby relinquish to the United States the within Military Bounty Land Warrant, No. 115,559, for 160 acres, in part payment of the southeast quarter, sec. 2, T. P. 15 N., R. 14 W., Montana, located in the name of

(Testimony of George D. Greene.)

Marion B. Watson, at the Helena, Montana Land Office, this 28th day of September, 1899.

M. B. WATSON.

Witnesses: P. M. COLLINS.

C. L. GRISWOLD.

Helena, Mont., Sept. 28, 1899.

Q. Are there any more of these warrants?

A. In cash entry 6190 by Mrs. May Hawthorne, payment was made by surrender of Military Bounty Land Warrant No. 1739 for eighty acres of land; number 4493 for forty acres. Certificate No. 115,556 for 160 acres.

In cash entry 6121 by John Gilles, payment was made by surrender of Military Bounty Land Warrants, No. 89189 and 69674 for 160 acres each.

Cash entry No. 6269 by Levy B. Cyr. In that case payment was made by surrendering the Military Bounty Land Warrant No. 61,671 for 160 acres. In one of these cases the scrip entry was not returned. Levi B. Cyr's entry was paid in scrip, but it was not returned to us.

Q. Do you know in what form it was?

A. Yes, sir. Military Bounty Land Warrant No. 61,671 for 160 acres. That just paid for one-half of it.

Q. That is the same as in some of these other cases.

A. That is the same kind only it got separated in the general land office and didn't come back.

Q. Have you any date of the assignment?

A. No, except that it has been approved by the Commissioner.

Q. Now, how many are there?

(Testimony of George D. Greene.)

A. There was three that I referred to, three that I looked up since you were gone and gave in evidence, and these were paid by scrip altogether.

Q. The name of P. M. Collins appears on each of them? A. Yes, sir.

Q. Who is P. M. Collins?

A. P. M. Collins is the manager now of the Collins Land Company of Helena, Montana.

Q. He is what?

A. The manager of the Collins Land Company of Helena, Montana.

By Mr. BICKFORD.—And a land attorney is he not?

A. Yes, sir. That is he is a land attorney, but he doesn't practice in contested cases.

Q. In what business is the Collins Land Company with reference to these matters?

A. Why they deal in all kinds of scrip, Forest Reserve, Soldier's Additional, Bounty Land Warrants, Valentine scrip and all kinds that they can get hold of.

Q. Now, then, what is the nature of that business?

A. Well, it is simply dealing in scrip. They buy this different scrip and dispose of it to those that they can sell it to for the payment of the land. I think they handle Forest Reserve and Soldier's Additional more than anything else. They buy it and sell it to parties who want to take up land, and they take it up and pay it with this scrip. Really, the Forest Reserve and Soldier's Additional are not scrip, they are simply rights; they are commonly called scrip though.

(Testimony of George D. Greene.)

Q. As I understand you, the business they engage in is the procuring the scrip and selling it to parties who desire to acquire lands with it? A. Yes, sir.

Q. And buy this scrip from them?

A. Yes, sir.

Q. At rates that they may agree upon?

A. Yes, sir.

Q. And then selling them again to persons who want to use them for the purpose of taking up Government land? A. Yes, sir.

Q. And the gain would be in the difference what they paid for it and what the Government would allow?

A. Yes, but still the Government has nothing to do with fixing the price.

By Mr. BICKFORD.—To all this we object for the reason that it is irrelevant and immaterial and has no bearing upon the matters in issue in this case. We therefore move to strike out the testimony of the witness upon this matter.

Q. They deal in this scrip for the profit there is in it, I suppose?

A. Of course, they buy it just so as to make a profit on it.

Q. That is, if a person came up here to buy the land expecting to pay money, and they found out that they could use scrip instead of money and buy the scrip and they used it? A. Yes.

Q. Why they might save fifty dollars we will say.

A. Well, hardly that.

(Testimony of George D. Greene.)

Q. Well, whatever it is, I just used that.

A. Profits on the Bounty Land Warrants and some of that kind is hardly as large as that. The Collins were well acquainted in this district by reason of having been in the land office, and for that reason they disposed of a great deal of scrip for use in all kinds of entries. I think that is it.

Recross-examination.

(By Mr. BICKFORD.)

Q. In testifying before the land office with reference to the quantity of timber upon the land and the value of the land I will ask you to state if it is not a fact that the witnesses were frequently at a loss to make answer to that question?

A. Yes, sir, they were very much at a loss. We would have quite a conversation before they would reach a conclusion that would be put down.

Q. And then in every instance it was really arrived at as an estimate of the amount, was it not?

A. I think in every case it was arrived at as an estimate.

Q. And the effort upon the part of the land officers would be to assist these people in arriving at some conclusion for the purpose of complying with the rules of the land office?

A. Yes, our efforts were exerted in attempting to get a complete answer from the witness as short as possible, and one that they would agree to.

(Testimony of George D. Greene.)

Redirect Examination.

(By Mr. MAYNARD.)

Q. Let me understand you, Mr. Greene. What was your first answer to Mr. Bickford's question?

A. That the witnesses were at a loss as to what estimate to put upon the amount of timber on the land.

Q. I will ask you this question, if you know, were all of the patents that were issued by the Government in each and every one of these cases that you have referred to delivered to Mr. R. M. Cobban?

By Mr. BICKFORD.—We object to that as having already been testified to by the witness in his examination in chief and as being a repetition of the testimony heretofore given.

A. I think they were all mailed to Mr. R. M. Cobban according to our records, who surrendered the receiver's final receipt showing himself entitled to receive the patents.

GEORGE D. GREENE.

Subscribed and sworn to before me this twenty-second day of March, 1902.

HENRY N. BLAKE,
Examiner in Chancery.

ELMER E. HERSHEY, being recalled for further examination testified as follows:

By Mr. MAYNARD.—There is just one question, Mr. Hershey, and that is the same question that I just put to Mr. Greene, and that is as to whom the patents were issued.

(Testimony of Elmer E. Hershey.)

By Mr. BICKFORD.—We object to that because the record already shows to whom the patent was issued, in every particular instance in the examination in chief of Mr. Hershey when upon witness stand before. He stated from his record to whom every patent was issued that issued from the Missoula land office.

A. The patents were issued to the claimants in every case.

Q. Yes, but I mean to whom were they delivered?

By Mr. BICKFORD.—We object to that because the record in this case already shows to whom the patents were issued and delivered in every instance, and in the examination in chief of the witness, Mr. Hershey, when upon the witness stand he testified from his record to whom the patents were issued and delivered from the Missoula land office.

A. I am under the impression that they were all delivered to John B. Catlin, he having receiver's duplicate final receipt and returning it when the patents were returned and exchanging them for the patents. There might have been a few cases where it was not done, but I am just stating from my best recollection.

Q. I had before you a moment ago your answers that you made on the stand a long while ago and it was simply for the purpose of saving that trouble of having you bring patent book here, or making an abstract therefrom, that it would be necessary to do, and I just wanted to save that trouble. The best answer that

(Testimony of Elmer E. Hershey.)

you can give, and your best judgment is that they were delivered to John B. Catlin.

A. Yes, as far as I remember any of them.

ELMER E. HERSHEY,

Subscribed and sworn to before me this nineteenth day of March, 1902.

HENRY N. BLAKE,
Examiner in Chancery.

By Mr. MAYNARD.—If your Honor please, I expected there to be quite a number of witnesses on the Missoula train this afternoon from Missoula and these witnesses from Idaho left Boise yesterday afternoon at four-forty and if the train is on time they will be here ready to testify to-morrow morning. We had better take an adjournment until to-morrow morning I think.

By Mr. BICKFORD.—Yes, the train will not be here until four o'clock this afternoon.

By Mr. MAYNARD.—What I want to say to these gentlemen is that it will be necessary, on the theory that it will take as long a time to examine these witnesses as the foregoing witnesses, to ask to have the time extended into next week, or we will be compelled to have longer sessions or night and day sessions.

By Mr. WALSH.—This is what I think about that. Your witnesses are coming here, and we are not disposed to restrict you on any stipulation we have made with reference to the time, but when your case is ex-

(Testimony of Elmer E. Hershey.)

By Mr. BICKFORD.—We object to that because the record already shows to whom the patent was issued, in every particular instance in the examination in chief of Mr. Hershey when upon witness stand before. He stated from his record to whom every patent was issued that issued from the Missoula land office.

A. The patents were issued to the claimants in every case.

Q. Yes, but I mean to whom were they delivered?

By Mr. BICKFORD.—We object to that because the record in this case already shows to whom the patents were issued and delivered in every instance, and in the examination in chief of the witness, Mr. Hershey, when upon the witness stand he testified from his record to whom the patents were issued and delivered from the Missoula land office.

A. I am under the impression that they were all delivered to John B. Catlin, he having receiver's duplicate final receipt and returning it when the patents were returned and exchanging them for the patents. There might have been a few cases where it was not done, but I am just stating from my best recollection.

Q. I had before you a moment ago your answers that you made on the stand a long while ago and it was simply for the purpose of saving that trouble of having you bring patent book here, or making an abstract therefrom, that it would be necessary to do, and I just wanted to save that trouble. The best answer that

(Testimony of Elmer E. Hershey.)

you can give, and your best judgment is that they were delivered to John B. Catlin.

A. Yes, as far as I remember any of them.

ELMER E. HERSHEY,

Subscribed and sworn to before me this nineteenth day of March, 1902.

HENRY N. BLAKE,
Examiner in Chancery.

By Mr. MAYNARD.—If your Honor please, I expected there to be quite a number of witnesses on the Missoula train this afternoon from Missoula and these witnesses from Idaho left Boise yesterday afternoon at four-forty and if the train is on time they will be here ready to testify to-morrow morning. We had better take an adjournment until to-morrow morning I think.

By Mr. BICKFORD.—Yes, the train will not be here until four o'clock this afternoon.

By Mr. MAYNARD.—What I want to say to these gentlemen is that it will be necessary, on the theory that it will take as long a time to examine these witnesses as the foregoing witnesses, to ask to have the time extended into next week, or we will be compelled to have longer sessions or night and day sessions.

By Mr. WALSH.—This is what I think about that. Your witnesses are coming here, and we are not disposed to restrict you on any stipulation we have made with reference to the time, but when your case is ex-

(Testimony of J. B. McIntosh.)

hausted why then we want to close the case so as not to have any long adjournments.

By Mr. MAYNARD.—Very well.

At this point an adjournment was taken until Wednesday morning, March 19th, 1902, at ten o'clock.

HENRY N. BLAKE,
Examiner in Chancery.

Wednesday, March 19th, 1902, 2 P. M.

J. B. McINTOSH, a witness on behalf of the complainant being first duly sworn, testified as follows:

Direct Examination.

(By Mr. MAYNARD.)

Q. Will you please give me your name, age and place of residence.

A. J. B. McIntosh; age 45 years; residence Missoula, Montana.

Q. Were you living in Missoula in the year 1899?

A. Yes, sir.

Q. What business were you engaged in then?

A. Retail liquor business.

Q. Whereabouts? A. 116 West Front street.

Q. Do you know Mr. C. L. Griswold?

A. Yes, sir.

Q. And did at that time? A. Yes, sir.

Q. How long had you known him before that time?

A. To my recollection I knew him five or six months.

Q. Five or six months before that?

(Testimony of J. B. McIntosh.)

A. Yes, I think so, I would not state positively though, but sometime like that, before that.

Q. Did you know what business he was engaged in in the spring and summer of 1899? A. Yes.

Q. What was it?

A. Well, I know he was in a business of locating timber claims, taking them up in some way, well, locating them, locating people.

A. Locating people?

A. Well, that is the way I understood it at that time, that he was locating people, or helping to locate people, selecting out places where he would take people to and helping to show them the lines and such things as that, where they could locate themselves.

Q. Did you know for what purpose he was doing that, for whom he was working?

Mr. WALSH.—We object to that as leading.

A. Why, I suppose he had an idea, he could be doing it all for himself.

Mr. WALSH.—We move to strike out the answer as not responsive.

Q. Did you know for what purpose he was doing that, for whom he was working?

A. I don't know as I did know whom he was working for, if he was working for any particular one, only those that would pay him for his services, of course I heard it rumored—I heard Dinsmore and Cobban's name mentioned at times, and then I have heard Clark's

(Testimony of J. B. McIntosh.)

name mentioned at times, but as it was not interesting me very much I never inquired into the details.

Mr. WALSH.—We move to strike out the answer of the witness as far as it affects Mr. Cobban, Mr. Dinsmore and Mr. Clark on the ground that it appears to be hearsay.

Q. You may state as to whether or not during that season of 1899 you applied to Mr. Griswold to get a timber location for yourself?

A. I think it was, to the best of my recollection, about probably the latter part of June he was in my place of business one evening shortly after six o'clock, and I asked him—

Mr. WALSH.—We object to the answer of the witness with reference to this matter on the ground that there is no allegation in the bill of complaint concerning an alleged fraudulent entry made by the witness or by any person for him.

A. (Continued.) —asked him if he could show me where I could locate a timber claim as I had not used my rights in that respect, and if he could, that I would like to get one, and his answer at that time I do not just remember what it was; in fact it was to the best of my recollection, was not much of anything; there were people in the saloon then; he was apparently in a hurry, and he went out. I don't know—over three or four weeks after that I spoke to him again, and he said he did not know that he could, he said that he thought the best of them were taken up, and did not know as he could do anything for me;

(Testimony of J. B. McIntosh.)

why, I says, I don't want you to do this thing for nothing. I expect to pay you for your services, and he also repeated again that he did not think he could do anything for me then, and that was about the last talk that I had with him; I do not recollect of having any more.

Q. And he did not secure a claim for you?

A. No.

Q. Did you take one up? A. No, sir.

Q. Now, then, please state as to what did come to you, what information you did receive from different sources and from different persons in your place of business in Missoula as to who was buying these claims, and how much the people who entered them were making, and what they had to do?

Mr. WALSH.—We object to this as calling for hearsay, and as immaterial and irrelevant.

A. Well, I had—there had been several men for at least three months, or such a matter, that were locating and getting claims, used to come into the saloon and tell about getting a claim, this place and that place, that they had made an estimate and so many million feet on, held them for so long, had expended so much money in the matter in the line of grub, supplies, and that they considered it was worth so much, and figured around and would get in the neighborhood of a hundred dollars, or such a matter; some of them, perhaps, would state more.

Q. Who did they tell you they sold these claims to for one hundred dollars?

(Testimony of J. B. McIntosh.)

Mr. WALSH.—We object to that as immaterial and irrelevant, and calling for hearsay evidence.

A. I heard the name of Cobban and Dinsmore used several times, and heard Clark's name used, and would naturally think from their conversation that they were buying up this timber, that they were selling to those men.

Q. Then after hearing this, as I understand you, you applied to Mr. Griswold for one for yourself?

A. Well, during that time.

Cross-examination.

(By Mr. WALSH.)

Q. You did not contemplate committing any perjury to get this claim, did you? A. No, sir, I did not.

Q. When you took up a claim you intended to take it up and dispose of it eventually?

A. That was my intention; I knew nothing—

(By Mr. MAYNARD.)

Q. You had money of your own, hadn't you?

A. I had money.

(Mr. WALSH.)

Q. If you had not, your credit was pretty good; you could borrow some, I presume, Mr. McIntosh?

A. Well, I presume I could.

———————.

Subscribed and sworn to before me this —— day of ——, 1902. See stipulation, post, page 2546.

HENRY N. BLAKE,
Examiner.

W. B. PARSONS, a witness on behalf of the complainant, being duly sworn, testified as follows:

Direct Examination.

(By Mr. MAYNARD.)

Q. What is your full name? A. W. B. Parsons.

Q. Your residence? A. Missoula, Montana.

Q. Your profession? A. Physician and surgeon.

Q. Were you living in Mssoula on or about the 7th day of October, 1899? A. Yes, sir.

Q. You may state as to whether or not you knew at that time a man by the name of Calvin Yarger?

A. I do not remember of ever knowing a man by that name.

Q. Please state as to whether or not you have any knowledge or recollection of Calvin Yarger calling upon you at your office in the city of Missoula, or at any other place in the city of Missoula on or about the 7th day of October, 1899, and asking you if you would buy a piece of land that he had entered from the Government under the Timber and Stone Claim Act, up in the Blackfoot country, or anything of that kind?

Mr. WALSH.—We object to this upon the ground that it is an attempt to impeach and contradict the testimony of the witness Yarger called by the Government, and upon the ground that the testimony is irrelevant, incompetent, and hearsay.

A. I say I do not remember that he ever said anything. I do not remember the man at all, never saw him before

(Testimony of W. B. Parsons.)

that I know of, but possibly I may have done so; I do not remember.

Q. You do not recall any kind of a conversation you ever had with him on that subject, or any other?

A. No, sir, nothing at all.

Q. You may state, Doctor, as to whether or not within the last few days a man called upon you and introduced himself to you, and said that his name was Calvin Yarger, and wanted to know from you if you did not recall the fact of having had a conversation with him on the subject to which I have referred?

Mr. WALSH.—We object to that as leading, and irrelevant and immaterial.

A. I do, Mr. Yarger said that was his name; called on me a week or ten days ago and asked me if I remembered the transaction; I told him no, I could not recall it, but that I would give it some thought and, perhaps, I might recollect it, but I have not been able to do so.

Q. I do not understand.

A. I say I told him I could not recall it, of his trying to sell me some timber land, I told him that I would consider it for few days and see if I could not recall it, recollect, but I have not been able to do so; I do not remember anything about it.

Q. You may state now, Doctor, as to whether or not you have any present recollection of ever having seen the man that called upon you at the time and place that you now have mentioned, as being a man by the name of Calvin Yarger?

(Testimony of W. B. Parsons.)

A. I have none at all; I have no recollection of ever seeing him before.

Q. Just when was this time and place that this man called upon you and said his name was Calvin Yarger?

A. The time and place, I could not say the exact time; I should say ten days ago; it may have been two weeks.

Q. Or might have been less?

A. Yes, might have been less.

Q. Was he alone? A. He was alone, yes, sir.

Cross-examination.

(By Mr. WALSH.)

Q. You own some timber lands up in Missoula county?

A. I own timber land, yes, sir.

Q. How much do you own?

A. Two hundred and forty acres.

Q. Where did you get it?

A. I bought eighty acres up the Blackfoot from, I do not remember from whom now, and I scripped one hundred and sixty acres in the Flathead.

Q. About eighty acres up in the Blackfoot?

A. Yes.

Q. Where in the Blackfoot?

A. About Clearwater somewhere, I do not know.

Q. From whom did you buy?

A. I do not remember what the man's name was from whom I bought it. I own a hundred and sixty acres more out there, or at least I have an interest in it.

Q. Up on the Blackfoot? A. Yes.

(Testimony of W. B. Parsons.)

Q. How did you acquire that?

A. I bought it from a man by the name of Shipley.

Q. Where does Shipley live?

A. Shipley is a miner; he used to live there—I do not remember.

Q. You don't remember who you bought the other eighty acres from? A. No, I do not.

Q. Your recollection about that is no more distinct than it is about having or not having talked with Mr. Yarger? A. No, sir, not a bit more.

Q. These comparatively trifling business transactions do not seem to have fixed themselves upon your mind?

A. I have a very poor memory.

Q. So, if I understand you, Doctor, you are not here to testify that this man did not come and ask you?

A. I say it is possible.

Q. You simply have no recollection of that man one way or the other? A. Yes, sir.

Q. At the same time you say your memory is not very good?

A. I say it is possible; I have no remembrance of it.

Redirect Examination.

(By Mr. MAYNARD.)

Q. This piece of land you bought, do you own it still?

A. Yes.

Q. When did you buy that?

A. I could not tell, it has been six or seven years ago, I think, or five or six.

(Testimony of W. B. Parsons.)

Q. Five or six years ago you bought this piece?

A. Yes.

Q. Was the man that you bought from a stranger?

A. No, I don't think so, I do not remember just who it was; of course by referring to the deed I could tell; of course if I knew him I would know who it was; it may be he was a stranger to me.

Q. You have dealt some in timber lands, have you?

A. A little, yes.

_____.

Subscribed and sworn to before me this —— day of ———, A. D. 1902.

_____,

Examiner.

It is stipulated that the Examiner can certify that the testimony of the witnesses, J. B. McIntosh and W. B. Parsons, has been correctly transcribed, and have like effect as if read, corrected and subscribed by them.

HENRY N. BLAKE,

Examiner.

I do hereby certify that the testimony of the said witnesses, James B. McIntosh and W. B. Parsons, has been correctly transcribed.

HENRY N. BLAKE,

Examiner.

VITAL CYR, a witness called on behalf of the complainant, being first duly sworn, testified as follows:

Mr. WALSH.—I want to have a talk with Mr. Cyr before he testifies.

The EXAMINER.—Let that appear in the record.

Direct Examination.

(By Mr. MAYNARD.)

Q. Mr. Cyr, are you a brother of Levi B. Cyr?

A. Yes, sir—brother in law.

Q. Brother in law? A. Yes, sir.

Q. But you happen to have the same name?

A. Oh, well, got lots of Cyrs in the country you see.

Q. Did you marry—

A. He married one of my sisters, that is how we came to be brother in laws.

Q. Have you seen him since he was up here as a witness?

A. No, sir, I did not see him for a year now.

Q. Haven't seen him for a year? A. No.

Q. Have you received a letter from him?

A. No, sir.

Q. Within the last two or three weeks?

A. No, sir.

Q. You knew he was here as a witness, didn't you?

A. I just heard about it, I was come down town yesterday, down to Missoula; I just heard he was a witness.

Q. Who told you that?

A. Last night—I forget his name now; that fellow that came up after me yesterday.

(Testimony of Vital Cyr.)

Q. The sheriff? A. Yes.

Q. The marshal? A. Yes, sir.

Q. Mr. Gage?

A. Gage, yes, sir, I don't know him, but that is what —he told you.

Q. He told you?

A. He told me, he was in here a few days ago.

Q. Where do you live?

A. I work all over the country, down in Missoula, there; working all through there.

Q. Are you what is known as a day laborer? You are known as a common laborer? A. Yes, sir.

Q. Are you a married man? A. No, sir.

Q. How old are you?

A. I am thirty-four next spring, this spring next May.

Q. Do you own any land? A. No, sir.

Q. Do you own personal property? A. No, sir.

Q. Do you know what I mean by personal property?

A. Yes, sir.

Q. Horses and cows? A. I don't own any.

Q. Was that true in 1899, did you own any real estate or personal property in 1899?

A. Well, I can't tell just exactly what year now, but I know I had them take out a claim up the Blackfoot.

Q. I mean except that claim, did you own any other land except the claim that you took up, up the Blackfoot? A. No.

Q. You did take up a claim in 1890, about three years ago, didn't you, up in the Blackfoot?

(Testimony of Vital Cyr.)

A. Three years ago I took some up.

Q. Now, will you just go on how you came to take it up and so on, who told you about it and what you did?

A. Well, I just take him up; I think I would go to log up there, and me just take a piece of land there to log on; go to log ourselves, that is the way I had been doing.

Q. Who did you first hear from that you could take up this claim? A. I could not take up claim.

Q. That you could take up this claim, up in the Blackfoot, who told you that?

A. Well, I heard about it just like all of the rest of them.

Q. What do you mean by that?

A. Well, I just come in the paper the way it is, a poor man have a chance to take up claim, that is what I mean, so I went up to take one to log on, that I would cut logs myself; that is what I had been thinking.

Q. That is what you had been thinking?

A. Yes, sir.

Q. That you would cut the logs yourself?

A. Yes, sir.

Q. That is the way you came to take up the claim?

A. Yes, sir.

Q. Can you remember now who you had a talk with about it?

A. No, sir, I just—I was working on the lower camp, and all the boys there talking about that way, that fellow was right in the paper, a man had show to take

(Testimony of Vital Cyr.)

up a claim; that is what I heard about it, so I went up and took up one.

Q. Where were you working in the lumber camp at that time?

A. I was, let me see which place I was, I cannot say just exactly where I was working, because I done work all over the country since that and before.

Q. You don't know where you were then?

A. I was down at Huston, I think it is, I can't tell just exactly.

Q. You say the boys were talking about it in the camp? A. Yes, sir.

Q. And from what you heard the boys say you thought you would take up one?

A. Yes, thought I would go take one and try to get the log myself.

Q. Well, do you remember of your going up into the mountain when you made the location?

A. Yes, sir.

Q. You remember that? A. Yes, sir.

Q. Do you remember who you went with?

A. Yes, sir.

Q. Who did you go with?

A. I went with Mr. Seeley and Levi Cyr, who was the three of us.

Q. What is Mr. Seeley's name?

A. I can't tell, I forget his first name now, but I know that it is Seeley.

Q. How long had you known him?

(Testimony of Vital Cyr.)

A. Well, I had known him about a year before that, I guess about two years before that, I got job down at Bonner.

Q. Where did you start from? A. Missoula.

Q. How did you go?

A. Well, I went up on a rig, I suppose, there ain't a train going up there.

Q. Whose rig was it?

A. That is our own rig, we had a rig, Levi Cyr had a rig; we had one; we went up, the two of us and Mr. Seeley was up there.

Q. You and Levi went up there from Missoula?

A. Yes, sir.

Q. And Seeley was up there?

A. Yes, sir, he lives up there.

Q. In the Blackfoot? A. Yes, sir.

Q. Where was Levi working at this time?

A. He is up the Flathead country, I don't know which place he is, I have not seen him for a year.

Q. Where was he working at this time that he went up?

A. Well, I don't know where he was working.

Q. You don't know where he was working?

A. No, I had been with him around Missoula a couple of days before we went up, three or four days before we went up.

Q. Where did you first talk with Levi about this matter?

A. Around Missoula, I was around town, the two of

(Testimony of Vital Cyr.)

us, I think he was working for Jennings, there on this side—let me see where he was working, I can't say now just exactly where he was working, I know I met him around town and we talked about going up there, and we just started together.

Q. You met him in the town there a day or two before you started? A. Yes, sir.

Q. Talked about this matter? A. Yes, sir.

Q. Then you two started together?

A. Yes, to be partners, thought we would go partners.

Q. Did you speak to him about it first or did he speak to you? A. Oh, well, I can't remember that.

Q. Can't remember that?

A. No, sir, can't remember that.

Q. How long a time has it been before you had seen Levi before this time?

A. About a month and a half I guess, something like that, I can't tell just exactly, but I know it was over two months.

Q. Well, you spoke about it with him two months before that, did you? A. No, sir.

Q. You did not? A. No, sir.

Q. The first time the matter was ever brought up between you was when you were in Missoula?

A. Yes, sir, that was the time I met him there.

Q. You don't know whether you spoke to him about it or he spoke to you?

A. No, sir, I can't tell just exactly which now.

(Testimony of Vital Cyr.)

Q. But he hitched up his horse and you both went up to the mountains to see this land?

A. Yes, sir.

Q. How long had it been before you had seen Seeley?

A. Before that?

Q. Yes. A. Oh, about two years, I guess.

Q. Hadn't seen Seeley in two years?

A. No, sir.

Q. Had Levi seen Seeley? A. No, sir.

Q. For how long a time?

A. Well, I can't tell, I don't know whether he had heard about him before that, I can't tell.

Q. Don't know whether he had ever met him before or not?

A. He was known him down to Bonner before, because he had worked there.

Q. Seeley was? A. Yes, sir.

Q. You were working there? A. Yes, sir.

Q. Did Levi work there? A. No, sir.

Q. You didn't have any money at that time at all did you?

A. Well, we had, Levi had a logging outfit there.

Q. I know, but I am talking about you.

A. No, sir.

Q. Well, who paid your expenses up there?

A. Well, I had a few dollars, I had fifty dollars with me, that is altogether up in the mountains with.

Q. You had fifty dollars?

A. Well, something like that.

(Testimony of Vital Cyr.)

Q. How long had you had that fifty dollars before you started to go to the mountains?

A. I don't—because that don't come very often in my hands.

Q. It don't come very often in your hands?

A. No, sir.

Q. Then you would remember when you got it, wouldn't you?

A. Yes, because I had been working for it and I had it.

Q. You had worked for it? A. Yes, sir.

Q. Do you remember who you worked for and got the money from?

A. Well, I think that was, I cannot tell just exactly, because I have been working all over; I think that was down to Huston for Mr. Ross.

Q. So you had about fifty dollars in your pocket when you started for the mountains?

A. Yes, when I started for the mountains.

Q. That is all you had? A. Yes, sir.

Q. And who did you go to see when you started for the mountains? A. Where did I go to see?

Q. Who did you go to see—did you go to see Seeley?

A. I went up there, yes.

Q. When you started from Missoula?

A. Yes, sir.

Q. You expected to see Seeley? A. Yes, sir.

Q. Went to his house? A. Yes, sir.

Q. Did he take you out to the location?

(Testimony of Vital Cyr.)

A. Yes, sir, we went around the timber all day long.

Q. The next day after you got there?

A. Yes, sir, the next day after we got there.

Q. Had you ever been up there before?

A. I had never been up there that far.

Q. Never been up there that far? A. No, sir.

Q. Just where was it?

A. That was up—I forget, we used to call that Seeley Lake; I don't know whether that is the right name or not, but Seeley had been there for three years, and so we used to call it Seeley Lake; I don't whether it has got another name than that.

Q. Have you ever been up there since?

A. Well, I went up there after I had taken up that claim.

Q. You did? A. Yes, sir.

Q. When? A. I have been up there since, no.

Q. That is what I say after you took it up?

A. No.

Q. So the only time in your life you were ever up there was the time you took up the claim?

A. I went up a little after, I don't know how long; but I went up after that.

Q. What for?

A. I went up to get Mr. Seeley for a witness to prove on the land.

Q. To prove up on your claim? A. Yes, sir.

Q. You went to Seeley's house?

A. Yes, sir, I stopped there over night.

(Testimony of Vital Cyr.)

Q. So the only time you were ever on this claim in your life was the time Seeley took you there?

A. Yes, sir, that is about it, one time.

Q. And he took you there the next day after you got to his house? A. Yes, sir.

Q. And your brother in law was along, too?

A. Yes, sir.

Q. Did he take your brother in law to this claim, too?

A. Yes, sir.

Q. That same day? A. Yes, sir.

Q. And when did you leave Seeley's?

A. We leave Seeley that night; we come down to Mr. Griswold's place there on the Clearwater there.

Q. To Mr. whose place? A. Mr. Griswold's.

Q. How far were these locations from Mr. Seeley's house?

A. Well, I can't tell just exactly, but it is not very far I know; I can't tell just exactly; I don't remember now, but I know it is not very far.

Q. And did you say that you got there the night before? A. Where?

Q. To Seeley's? A. Yes, sir.

Q. What time did you get there?

A. I can't tell just exactly, but I know it was getting pretty late, about seven o'clock, and half-past or eight we got there.

Q. Then you stayed there over night?

A. Yes, sir.

Q. And you and your brother in law went out with

(Testimony of Vital Cyr.)

Seeley to look at this land, then left in the evening—in the afternoon? A. Yes, sir.

Q. Went down to Mr. Griswold's on the Clearwater?

A. Yes, sir.

Q. Now, Mr. Cyr, tell me what you did that day with Seeley, your brother in law, and yourself, this one day in your life that you were up there, what did you do?

A. What did I do?

Q. Yes?

A. Well, just went round the timber to see the timber, find all the posts, then there all day long, pretty near; we started in the morning about half-past six, something like that, I can't tell; and we left there after we been located; we left there about half-past three or four o'clock in the afternoon.

A. And who was with you besides your brother in law and Mr. Seeley?

A. There was only the three of us.

Q. That is all? A. Yes, sir.

Q. Do you remember where you went when you left the mountains, after you left the Clearwater, where did you go? A. Where did we go?

Q. Yes? A. We came down

Q. To Missoula? A. Yes, sir.

Q. You and your brother in law?

A. Yes, sir, me and my brother in law.

Q. You had the descriptions of your land with you, hadn't you?

(Testimony of Vital Cyr.)

A. Yes, sir, we had all the posts and what section it was.

Q. Who gave that to you?

A. My brother in law can write and read, so he can take them right from the posts, from the posts on the corners.

Q. Your brother in law can write and read?

A. Yes, sir.

Q. And he took these descriptions from the corner posts? A. Yes, sir.

Q. You are sure of that?

A. Well, I am pretty near sure, I can't tell just exactly, but I am pretty near sure of it, I cannot tell; I can't remember now.

Q. Cannot remember now what?

A. He took them, but I know he—we were looking for all the posts there so we could been take one; I don't know if we did not get one that way.

Q. Then he got your numbers for you?

A. Yes, because I could not write.

Q. You could not write nor read? A. Yes, sir.

Q. So you had to get somebody to help you?

A. Yes, sir, Mr. Seeley was with us; there was three of us.

Q. Now, Mr. Cyr, who was it that gave you your description, if you know; was it your brother in law, or was it Seeley?

A. I can't tell just exactly now, I don't remember now.

Q. What did you do when you came to Missoula?

(Testimony of Vital Cyr.)

A. What did I do?

Q. Yes.

A. Well, I come up in there the day after; I think it is the day after we get to Missoula, we come up to Helena

Q. The day after you left Missoula?

A. I can't tell just exactly, but I know we came right here.

Q. Then you came to Helena? A. Yes, sir.

Q. For the purpose of filing? A. Yes, sir.

Q. Who came with you?

A. I don't remember now who it was; I don't remember now, but I think we came up—

Q. Do you remember what you did when you came here? A. Yes, sir.

Q. What did you do?

A. I just came over here with Levi, and Mr. Seeley came here for a witness, you see.

Q. I mean when you first came here to file, the first time you came here? A. What did I do?

Q. Yes.

A. Well, we went to the land office.

Q. Who was with you?

A. Me and my brother in law.

Q. Nobody else?

A. Well, we got here at night and we just went up there the next day; I don't remember who was with me; I know we had somebody with us, and I can't remember.

Q. Was he a stranger to you?

A. Well, I had seen him before a couple of times; but

(Testimony of Vital Cyr.)

I don't, of course, I was not much acquainted with him, that is all.

Q. Where does he work?

A. Where did he work?

Q. Yes. A. I don't know where he worked.

Q. Don't know what his business was?

A. No, because I don't remember who it was.

Q. Don't remember at all?

A. No, I can't tell what his business was because I don't remember who it was.

Q. What was he doing with you?

A. What he was doing with me?

Q. Yes, you say there was another man with you?

A. Another man with me; I had Levi Cyr with me.

Q. Was there anybody else in your party?

A. Well, I don't remember, that is what I told you.

Q. You don't remember the man? A. No.

Q. But there was another man?

A. I don't think there was another man, if I did have one; I don't know, I don't remember that.

Q. Don't remember that? A. No.

Q. Have you any recollection as to what you did in the land office?

A. Well, we went up there, gave in the same that we have, this location up there, that is all I remember.

Q. What do you mean by that, I do not understand your language?

A. Well, I can't talk very much English: if I could

(Testimony of Vital Cyr.)

talk good English I could explain you good, but I don't talk very good.

Q. Well, tell us in the best way you can, that is all I want; what I want to know is, what you did in the land office the first day you went there; you say you gave in the description of your land? A. Yes, sir.

Q. Who did you give it to?

A. It had been given it to that fellow that was around there, I forget his name now; we gave it to him; I forget his name.

Q. Gave it to the fellow running the office?

A. Yes, sir.

Q. What kind of a paper was it that you gave him?

A. All we gave him the number of the poles to the ranch; which place it was, that is all.

Q. That is all? A. Yes, sir.

Q. What did he do?

A. Well, he went and fix them, I guess.

Q. He went to fix them?

A. He went to work, said that would be all right.

Q. You mean that he filled out the papers?

A. Yes, sir, that is what I mean.

Q. He did? A. Yes, sir.

Q. The man in the office? A. Yes, sir.

Q. Did you pay any money in there?

A. Yes, sir.

Q. How much? A. Ten dollars apiece.

Q. How much did it cost you to come from Missoula?

A. From Missoula here?

(Testimony of Vital Cyr.)

Q. And back?

A. It cost us ten dollars both ways; we paid five dollars to come up here.

Q. Five dollars to come up here and five dollars back?

A. Well, that much.

Q. That would be twenty dollars?

A. Yes, between the two of us.

Q. For each of you? A. Yes.

Q. Then, how much was your hotel bill?

A. I don't know how much it was.

Q. Did you pay it? A. Sure.

Q. You paid your hotel bill? A. Yes, sir.

Q. You paid your railroad fare?

A. Yes, sir.

Q. You paid your ten dollars into the land office?

A. Yes, sir.

Q. That would have been twenty-five dollars anyhow, would it not? A. Yes, sir.

Q. Now, Mr. Cyr, who did you borrow that twenty-five dollars from? A. I had it.

Q. You had the twenty-five dollars? A. Yes.

Q. You did not borrow that money from anybody?

A. No, sir.

Q. You are sure of that?

A. Yes, I am sure of that.

Q. And what were the names of your witnesses, Mr. Cyr?

A. I got Mr. Seeley for one and Levi Cyr for another.

Q. You had Levi Cyr for one? A. Yes, sir.

Q. And Seeley for one? A. Yes, sir.

(Testimony of Vital Cyr.)

Q. How many more did you have?

A. I don't remember if I had any more at all, but I know I had Levi and Seeley, because I know these men, I don't remember if I had more than that, I know I had Levi and Mr. Seeley.

Q. At the time that you came here to make your filing just as you have named it now, you knew Mr. Cobban, didn't you?

A. Yes, I had seen him around town.

Q. Had you had any talk with him about this matter? A. No, sir.

Q. No talk at all? A. No, sir.

Q. Did you know Major Catlin?

A. Major Catlin, yes, sir; Catlin, yes.

Q. Catlin, yes.

A. I don't remember him, I might have seen him but I don't remember him.

Q. Had you had any acquaintance with him—what kind of an acquaintance had you had with Mr. Cobban, ever work for him? A. No, sir.

Q. Never work for him? A. No, sir.

Q. Had you ever had any business with him of any kind? A. Before?

Q. Yes. A. No, sir.

Q. Had you with Mr. Griswold?

A. I can't tell whether I had or not.

Q. Can't tell whether you had ever had any business with Mr. Griswold or not?

A. I don't remember.

(Testimony of Vital Cyr.)

Q. You did not talk this matter over with him when you stopped at Clearwater?

A. No, because he wasn't there, he had another man on his place there, we used to call it Mr. Griswold's place, stopping place.

Q. So you had no talk of any kind with Mr. Cobban or anybody for him at the time you came here?

A. No, sir.

Q. Now, don't you know whether you ever had any more witnesses than these two, then Seeley and your brother in law or not?

A. Well, I can't remember that at all you see.

Q. Can't remember that at all?

A. No, sir, because if I would remember them, I would just tell them just the same; anything a man can't remember he can't say.

Q. Do you remember your coming back here again to prove up?

A. Yes, sir.

Q. Who did you come with then?

A. Came with Levi.

Q. Anybody else? A. Then met Mr. Cobban.

Q. What?

A. When I came up, the two of us, me and Levi.

Q. You mentioned Mr. Cobban's name, what about that? A. We then met Mr. Cobban.

Q. Here in town? A. Yes, sir.

Q. What day did you meet him?

(Testimony of Vital Cyr.)

A. The same day. I don't remember now just exactly.

Q. Do you mean you met Mr. Cobban here in Helena? A. Yes, sir.

Q. And had you seen him before that and after you had filed, between the times of your filing and your coming up here to prove up?

A. No, sir, I did not see him.

Q. Never seen him? A. No, sir.

Q. Had no talk with him? A. No, sir.

Q. So the first talk you had with Mr. Cobban then was on the day that you proved up?

A. Yes, sir, well I just got acquainted with him that day.

Q. Just got acquainted with him that day?

A. Yes, sir. Levi Cyr had known him, I guess, because he had been around town and saw Mr. Cobban, was loafing around there.

Q. Who introduced you to Mr. Cobban that day you proved up? A. Levi Cyr.

Q. Whereabouts were you?

A. We were in here, around town.

Q. What did Mr. Cobban do with you on that day in connection with this business?

A. I don't know.

Q. You don't know?

A. No, I don't remember.

Q. Well, you knew that you had to pay for the land, didn't you, that you took up? A. Yes, sir.

(Testimony of Vital Cyr.)

Q. You knew that? A. Yes, sir.

Q. How much were you to pay?

A. How much?

Q. Yes.

A. Well, I can't tell just exactly, but I know that was four hundred dollars, I guess, Levi Cyr had a logging outfit so he would make the bargain.

Q. I did not say anything about your logging outfit, I asked you how much you paid?

Mr. WALSH.—There is no question that has been asked the witness, he has answered the question.

Q. Now, I ask you the question, do you know how much money you paid into the land office for your land?

A. Well, we had been with Mr. Cobban in here, and so Levi had been making a bargain with Mr. Cobban to pay, you see, for that land.

Q. Mr. Cobban paid for your land?

A. Yes, sir.

Q. So you did not pay anything? A. No, sir.

Q. And the first time that you saw Mr. Cobban was on that day, to have any business with him?

A. Yes, sir.

Q. Then you were introduced to him by your brother in law?

A. Yes, sir, that was the first day I got business with him.

Q. What had you been doing between these two dates, of your coming up here to file and your coming up here to prove up? A. I was working.

(Testimony of Vital Cyr.)

Q. Working what? A. Laboring.

Q. Did you know that there had to be an advertisement in the paper, advertising in the paper, that you had located on that land, you knew about that?

A. Yes, sir.

Q. Did you do anything about it at all at the time in any way? A. I don't know what you mean.

Q. Did you attend to the publication in any way, did you have anything to do with putting it in the paper? A. I don't remember now.

Q. How much did you pay for that?

A. For what?

Q. For printing it in the papers.

A. I don't remember, but I know, I remember it, we had been given them ten dollars apiece.

Q. You what?

A. The time we came up to file.

Q. That is all the money you remember of paying out?

A. Yes, I think that is all, I cannot tell just exactly, I am not sure.

Q. Then what did you do after you proved up here and Mr. Cobban paid the money in for you, what did you do then? A. I went at laboring.

Q. Went back home, didn't you? A. Yes, sir.

Q. Went back to Missoula? A. Yes, sir.

Q. Do you remember after your going back to Missoula what you did? A. What I did?

Q. Yes, about this land.

(Testimony of Vital Cyr.)

A. I know we went up to Bonner, try to have a—we was trying for to get a contract to cut the logs and log ourselves, and we could not have it.

Q. Could not have it? A. No, sir.

Q. Now, Mr. Cyr, did you go home the same day that you proved up here, when you proved up and this money was paid into the land office by Cobban, did you go back to Missoula that same day?

A. I think we went the next day. I think I remember now we lose the train, we were a little late for the train, we could not catch the train that same day, I cannot tell just exactly, but I know we were back one day.

Q. So you had to stay over here one day?

A. Yes.

Q. You went home the next day, didn't you?

A. Yes, sir.

Q. The next day after you proved up?

A. Yes, sir.

Q. You got home in the afternoon then, got to Missoula in the afternoon? A. Yes, sir.

Q. Of the next day? A. Yes, sir.

Q. Do you remember what you did then?

A. I know we went around town for a few days after that, I cannot tell just exactly, but I know after we had been around town, I cannot tell you how many days that we had been around there, but I know I went to laboring after that.

Q. Went what?

(Testimony of Vital Cyr.)

A. I went to laboring, found a job.

Q. You went to Bonner you say? A. Yes.

Q. How long after you got home to Missoula before you went to Bonner?

A. I can't tell just exactly what it is, how long.

Q. Well, how many days?

A. That is what I say I cannot tell how many days it was.

Q. Well, you went right off, did you?

A. I can't tell how many days we were around town after we got back there.

Q. How many days would you say?

A. Oh, about two or three days.

Q. Two or three days?

A. Something like that, three or four days.

Q. Do you remember what you were doing during these days, you say you were two or three, three or four days that you were around there after you got back from here, before you wen to Bonner, can you tell me what you were doing? A. What I was doing?

Q. Yes?

A. I wasn't doing anything around town, then I went up to Bonner.

Q. Did not do anything around town before you went up to Bonner? A. No, I was just loafing.

Q. How long were you at Bonner?

A. I went up in the morning and I came back the same day.